

COMPETITION LAW AND E-COMMERCE INDUSTRY: PREDICTING THE FUTURE FOR INDIA INC.

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ABSTRACT

E-commerce has revolutionized distribution and marketing. They can now be more direct. Internet companies, such as eBay Inc. and Amazon.com, Inc. and, are fully based on Internet-backed marketing notions. Traditional companies, such as insurance companies, banks and automobile manufacturers, for instance BMW Group, advance both lines of distribution: the e-commerce and classical channels with intermediaries. As reselling becomes concentrated by e-commerce, the functions of the dealers might then change from mere resellers to advisors and service providers. In many cases, the classical distribution networks will have to synchronise with the direct e-tailing networks. This creates anxiety between dealers and therefore, distributors may also start selling on the Internet. Therefore, while the distributors and manufacturers were once in a symbiotic, non- competitive, vertical relationship, the rise of ecommerce may usher those participants to be in competition (direct) with each other.

Can manufacturers retain all e-tailing outlets for themselves and preclude their distributors from competition in that sphere, or must they afford for some coexistence?

Is the relationship between distributors and manufacturers still a mere vertical one in the viewpoint of e-commerce?

How far might antitrust control stretch for e-commerce?

The focal point of the subsequent parts of the paper is the analysis of the law of abuse of dominance and anti-competitive agreements in the purview of e-commerce actors, i.e. online platforms, service providers, consumers and aggregators. The paper also puts a light on the new challenges created by the digital economy and the challenges posed to existing antitrust law, tools and approaches. How will dominance be quantified in digital markets when the CCI

traditionally uses market as a proxy of dominance is also discussed. This paper scans the recent developments in India in this area, in the light of foundations of competition law and economics.

INTRODUCTION

“The E-Commerce Industry is a force which no investor can afford to ignore”

- Cushla Sherlock

E-commerce industry popularly described as a sun-rise industry of India has crossed business worth \$16 billion by the end of the year 2015.¹ These figures are not surprising as both demand and supply side factors cumulate to set a galloping growth of e-commerce in the future. Such factors include- the rise of smartphones & mobile apps, growing young population of India, emergence of smart cities & Wi-Fi zones on one hand; and growing national and international capital funding in the e-commerce sector on the other.

While e- travel reckons for a lion’s share of e-commerce business covering 60-70% of space, next in the path are the e-tailing services which make up for 30% market space.² E-commerce is further featured by its expansion in outreach and product basket in geographical space. Therefore, a wide variety of services and products become available to larger masses across remote towns of India by a single click. The same is facilitated as e-commerce displays an era where partnership between good/service providers and online platforms, i.e. brands, is universal and involves diverse types of supply, purchase or distribution agreements operating at both vertical levels and horizontal levels.³ It is here that the interface between e-commerce and competition law become nuanced. Increasingly, companies i.e. those functioning in the e-commerce space exclusively (e.g. flipkart) and those highlighting dual presence (e.g. Shopper’s

¹ E-commerce market to touch \$16 billion in India this year, THE TIMES OF INDIA (TECH) April 9, 2015, available at:

<http://timesofindia.indiatimes.com/tech/tech-news/E-commerce-market-to-touch-16-billion-in-India-this-year/articleshow/46864759.cms>.

² Is India in an e-commerce bubble? BUSINESS STANDARD April 16, 2015, available at:

http://www.business-standard.com/article/companies/is-india-in-an-e-commerce-bubble-115041600253_1.html.

³ E-commerce in India: Accelerating growth, PWC REPORT available at:

https://www.pwc.in/en_IN/in/assets/pdfs/publications/2015/ecommerce-in-india-accelerating-growth.pdf.

Stop which has a presence in both mortar and online segment) are taking record of e-commerce enforcement and compliance.

From the viewpoint of the Indian Competition Regulator, i.e. Competition Commission of India (CCI), the analysis of e-commerce jurisprudence renders a new paradigm. Clearly traditional principles of product substitutability, consumer preference, and business efficiency cannot be applied directly to the e-commerce space as most of the transactions involve only a virtual interface with the service/product. Moreover, the presence of intermediaries in the industry of e-commerce, whether in the outline of retail platforms e.g. Snapdeal, Flipkart or aggregators e.g. Oyo rooms, Ola cabs etc. create a room for more complicated problems of competition law. It is therefore a ripe time to analyse the trends of enforcement of the competition law and compliance issues in the light of e-commerce industry.

In the case of *Ambitious Marketing v. Snapdeal.com & SanDisk Corporation*⁴, the Informant accused the E-Commerce company Snapdeal for engaging in anti- competitive practices in violation of S. 3 and 4 of the Competition Act, 2002, which affords for anti- competitive agreements and abuse of dominant position. Therefore, in this case, the Competition Commission of India held that insistence by SanDisk storage devices sold through online portals bought from its' distributors who are authorised cannot be considered as abusive and that Snapdeal.com had not engaged in sale or purchase of storage, rather it manages and owns a web portal that enables those sellers to sell products through a web- portal.

E-COMMERCE: CONCEPT AND NATURE

Electronic commerce is defined as a wide concept including any kind of commercial transaction (whether between commercial entities or private individuals) taking place vide electronic network. The electronic business mandates the computer or any other device like a phone enabled with an internet connection to assist 'click and buy' method of business.

⁴ *Ambitious Marketing v. Snapdeal.com & SanDisk Corporation*, Case 17/2014.

EMERGING E-COMMERCE MARKETS IN INDIA

A boost in the e-commerce activities across the globe has been witnessed in the last decade. India being no exception, the result is flourishing internet platforms, changing consumer preferences and roaring growth of start-ups. E-commerce has caused a sea change in the distribution and marketing industry. Many e-commerce companies, such as Snapdeal, Flipkart and Jabong are fully based on the concept of Internet-backed marketing.⁵

Forrester Research, in a report recorded that the consumers in the urban India are the key drivers of e-commerce and they are primarily availing e-commerce services in areas of travel⁶ and e-books. In many cases, distribution networks and traditional production coexist with the e-tailing (e- retailing) networks. This creates an assumed uncertainty between these two competing networks, which is also supported by the fact that distributors and dealers may also start selling on the Internet.

The graph below depicts the roaring growth of e-commerce in India and the expected growth in the year 2020.

COMPETITION ISSUES IN THE E-COMMERCE

It can be safely expressed, at the outset that the e-commerce has the required potential to improve the efficiency of market and the magnitude of the gains will bank specifically on the degree of competition which exists both in process and transaction e-commerce, therefore, the competition policy has a chief role to play in the ecommerce "revolution".⁷

1. One of the competition concerns relating e-commerce is whether or not e-commerce forms a separate market from the traditional retail activity. On one hand, there are specific products sold through the traditional channels and ecommerce portals usually turn out to be substitutes for each other. However, certain target consumers or in some products, due to reasons like

⁵ Motilal Oswal Securities Report (2014) available at <http://www.livemint.com/Industry/ZH8rVd65WLhQzsUFYE9zCJ/Indian-ecommerce-market-to-reach-20-billion-next-year-rep.html> last visited on January 18, 2016.

⁶ OECD Policy Roundtable on essential facility (1996) available at <http://www.oecd.org/competition/abuse/1920021.pdf>. Last visited on February 5, 2016.

⁷ OECD Policy Roundtable on Competition Issues in the Electronic Commerce 2000, DAF/CLP (2000)32 at 21.

complexities of electronic payment, delivery issues or lack of trust while paying in making advance payments, the market could be easily divided. Even within e-commerce itself, it is extremely difficult to delineate markets because price discrimination becomes uncontrolled.⁸

2. E-commerce can easily conceal the existence of price discrimination and also it opens up possibilities of price discrimination like: charging different prices from different consumers based on the description and details already shared by the consumer with the web portal. Consumer behaviour can be easily established through e-commerce websites as these usually yield in tracking previous behaviour through placing cookies.⁹

3. There can be concerns which emerge out of infrastructural factors as well, for instance as we know that internet assists e-commerce and internet conditions no boundaries, then e-commerce will considerably expand the scope of the geographical markets, eventually benefitting the competition. Here the issue is to examine whether this geographical extent is curtailed by imposition of any regulatory barriers and how the national competition agencies would actually deal with this.

4. Another complex issue emerging from 'internet' as a pre-condition for e-commerce mandates that to be able to enter into any commercial transaction online, the consumer must have an easy access to an internet connection which is possible through a connection with an Internet Service Provider. It will in turn be relied upon the ability of service providers to provide access to the consumer. Such access will extend the market on one hand and also accountable for adding more competitors to the market. Thus, the access to internet can be considered as an 'essential facility' which gives rise a number of antitrust issues.¹⁰

Due to wide spread accessibility and availability of rapid communication, information and lower costs allows the ecommerce consumers to be better placed in terms of availability of options and comparative analysis. This makes the e-commerce markets more transparent,

⁸ S. Chakravarty, Evolution of Competition Policy and Law in India (Pradeep S. Mehta, Functional Competition Policy for India, ed., 2006).

⁹ Valentine, Debra (2000) "Privacy on the Internet: The Evolving Legal Landscape", prepared remarks before Santa Clara University, February 11-12, available at: <http://www.ftc.gov/speeches/other/dvsantaclaraspeech.htm>

¹⁰ David A. Balto, 1999. "Emerging Antitrust Issues in Electronic Commerce", Antitrust Institute, Distribution Practices: Antitrust Counselling in the New Millennium", Columbus, Ohio, November 12; available at: <http://www.ftc.gov/speeches/other/ecommerce.htm>.

which not only enables price discrimination but also advances co-ordinated effects amongst the participants thereby hampering effective competition.

INTERFACE BETWEEN COMPETITION LAW & E-COMMERCE: ANALYSIS OF ISSUES

Competition law issues arise in the e-commerce industry in several ways. The Indian e-commerce industry houses both domestic and international players. Therefore, any merger or amalgamation of e-commerce firms whether in India or off-shore which may have an impact in India, remains liable for notification under Section 6 of the Competition Act, 2002 (Act).

Similarly, every agreement pertaining to transactions in the e-commerce space across producers, between producer and distributor, between producer/distributor and consumer remains subject to competition compliance as such terms may take an anti-competitive flavour under Section 3 of the Act causing an 'appreciable adverse effect' on competition.

The conduct of certain e-commerce players who enjoy dominance by virtue of their market share or other factors such as commercial advantage, service network etc. may also be brought under the radar of competition law. Such conduct under Section 4 of the Act may involve imposition of unfair terms or discriminatory conditions on commercial transactions such as sale or distribution in e-commerce space, setting of a final price of the commodity/service for the consumer, denying market space to new entrants or using one's power in one market to gain entry in another market.

Some of the issues reflecting the interface between competition law and e-commerce are discussed below.

ADVERTISEMENT SCHEMES IN E-COMMERCE SPACE

Since e-commerce companies operate in the online sphere, their visibility, brand name and promotion in this space is pivotal for their growth. Competition law affords them a tool to control their visibility in the market space.

Google, which is one of the most famous search engines gets its' maximum revenue from search advertising. The Director General has concluded upon the dominance of Google in the relevant market of search advertising markets and Web- search with a market share of more than 85% from 2009 to 2014 in Web Search. Allegations concerning to abuse of dominance arise as Google is said to be prejudiced in favour of its own offerings (Google Places, Google Maps, Google+ social network that aimed to compete with Facebook) meshed into its search results.

On specific findings, DG (Director- General) concluded that Google is abusing its dominance by:

- (i) putting (forcibly) unfair conditions on those it is selling services to as advertisers were forced to bid in ads effectively against Google's homegrown services that have an unfair advantage;
- (ii) restricting or limiting scientific or technical developments relating to services or goods or services to the prejudice of consumers (that is, if Google prevented other companies, such as rival online maps providers, from amplifying the market share and consequently stopping other services from growing to the detriment of consumer choice;
- (iii) preventing a company using its dominant position in one relevant market to invade into, or protect, other relevant markets (that is, for instance, Google keeping out other online mapping providers by its efficient cross-promoting or cross selling i.e. promotion of its own Google Maps services in its search results).¹¹

KEY ECONOMIC CHARACTERISTICS OF NEW ECONOMY FIRMS

(particularly with a focus on online businesses)

The term 'new economy' is used to outline sectors of the economy that produce new technologies, with a soaring reliance on telecommunications, computers and the Internet

¹¹ "Why did CCI write Google a bad report card?" LIVE MINT, (September 2, 2015)
<http://www.livemint.com/Companies/5D4c8f9kKB41IyL99Rfm4H/Why-did-CCI-write-Google-a-bad-reportcard.html>.

(OECD, 2004). Online businesses, which encompass a range of applications, services and content available on the Internet, form an important part of this sector.¹²

The characteristic, and one that is particularly chief for the present analysis, is that of demand-side economies of scale - network effects. Network effects arise when the benefit that a consumer derives from a service or product increases with a huge increase in the number of other users. ‘Metcalfe’s Law’ uses this rationale to put forward that the value of a communication network is proportional to the square of the number of participants.¹³ It is relatively easy to understand how this rationale pertains to social network sites like Facebook or WhatsApp – they become more valuable as more people start using them. Some other businesses in this section bring in ‘Indirect Network Effects’, where the value of the network increases not with the number of similar uses but with an increase in complementary services or users.

Examples incorporate platforms like e-commerce marketplaces (Flipkart and Amazon) that connect end customers with retailers; online classifieds (Quikr and OLX) that bring together sellers and buyers; and online taxi aggregation services (Ola and Uber), which connect drivers and commuters. In each and every case, the increase in users on one side of the market makes the platform that much more appealing for users on the other side. More sellers want to participate in a market that attracts more buyers; more commuters want to use a taxi service that has more drivers on its platform.¹⁴

For example, a website may provide free content to users, generating income through advertising revenues or may earn its revenues by charging users a subscription fee; or it may provide free content to users, generating income through advertising revenues. The battle between Facebook and Google and numerous other “free” online services is hence about capturing the maximum ‘eyeballs’, which determines losers and winners in the market for digital ad spendings.

¹² Graham C (2004). “Introduction.” In C Graham, F Smith (eds.), “Competition, Regulation and the New Economy,” p. 1-12. Hart Publishing.

¹³ Bob Briscoe AO, Tilly B (2015). “Metcalfe’s Law is Wrong.”

<http://spectrum.ieee.org/computing/networks/metcalfes-law-is-wrong>.

¹⁴ Economides N (2004). “Concepts in the Context of Monopolistic Competition.” In DW Jansen (ed.), “Creating Services and Products,” Bush Series in the Economics of Public Policy, p. 96-121. Edward Elgar Publishing.

http://www.stern.nyu.edu/networks/Economides_Competition_Policy.pdf.

IMPLICATIONS FOR COMPETITION IN THE SECTOR

“The sooner we drop the ‘e’ out of ‘e-commerce’ and just call it commerce, the better.”

– Bob Willett, former President of Best Buy International and CIO of Best Buy

Having laid out the primary economic characteristics of new economy industries¹⁵ in the frame of online businesses, we now turn to assess whether these features could give rise to any special anti-competitive concerns.¹⁶

The extent of losses being sustained by e-commerce firms in India through the practices of heavy discounting is the testament to the value that these businesses anticipate to gain from securing early control over the market.

It is revealed that the total combined losses of India’s top e-commerce companies (ten) quadrupled in the financial year 2014-15 which stood at a total of Rs.51.5 billion. Leading ecommerce marketplaces carried the highest proportion of these losses - Amazon India at Rs.17.2 billion, Flipkart at Rs.20 billion and Snapdeal at Rs.13.28 billion.¹⁷ The balance sheets of taxi aggregator Ola, which is in high competition with Uber in India, reveal a similar trend. Hence, in effect, Ola¹⁸ paid about Rs.2.5 as an incentive for every one Rupee that it earned. Despite increasing revenues, the sharp mount in the expenses of operation has caused the company’s losses to rise manifold in the last three financial years. In the seven years of its existence, Uber¹⁹ is reported to have lost at least US\$ 4 billion, of which about US\$ 1.27 billion was in the first half of 2016.²⁰

¹⁵ Monti G (2004). “Article 82 EC and New Economy Markets.” In C Graham, F Smith (eds.), “Competition, Regulation and the New Economy,” p. 17-53. Hart Publishing.

¹⁶ Rubinfeld (1998) notes that firms in dynamic high-technology markets often find it efficient “to compete jointly for today’s and tomorrow’s markets”, adopting strategies that will help them gain control of the market in the long-run.

¹⁷ Mazumdar J (2016). “E-commerce firms face new challenge as losses force reality check.” <http://indianexpress.com/article/business/business-others/e-commerce-firms-face-new-challenge-as-losses-force-reality-check/>.

¹⁸ Dalal M (2016). “Who’s lying about market share: Ola or Uber?” <http://www.livemint.com/Companies/LRaNYUrBjTD6qAdc3yDoIJ/Whos-lying-about-its-market-share-Ola-or-Uber.html>.

¹⁹ Busvine D (2016). “Uber says Didi deal frees resources for key Indian market.” <http://www.reuters.com/article/us-uber-india-idUSKCN11D23J>.

²⁰ Newcomer E (2016). “Uber Loses at Least \$1.2 Billion in First Half of 2016.” <https://www.bloomberg.com/news/articles/2016-08-25/uber-loses-at-least-1-2-billion-in-first-half-of-2016>.

APPROACHES TO COMPETITION ENFORCEMENT

What should the appropriate role for competition authorities be, in ensuring that Internet-based businesses function within a competitive framework?

There are broadly two positions on this question. The first view relies on the Schumpeterian idea of creative destruction. It argues that dominance in a new economy market is likely to be temporary, on account of rapid technological change, and the “constant fear of being outdone by a new product” (Monti, 2004). Supporters of this view argue that antitrust intervention is likely to be rendered both unnecessary and undesirable, except in the most unusual of circumstances, on account of the following factors:

There is a high likelihood of periodic paradigm shifts that will upset the existing order. Therefore, innovation will ensure that the market corrects itself without any need for specialised enforcement action.

The pace of decision making by competition authorities and the technical expertise available with them is not adequate to assess the competition issues in these innovative and fast-moving sectors. (Posner, 2000).

Economides (2004) notes that the existence of strong network effects in some markets, can result in significant inequalities in market shares and profits, even in the absence of any specific anti-competitive conduct. Given this, any attempt by competition authorities to influence the market structure, for instance by trying to induce more competition, could prove to be counterproductive and may in fact diminish the overall social surplus.

Interventions by competition authorities to correct these problems need to be rapid. In the words of the Supreme Court of India, “In the event of delay, the very purpose and object of the Act is likely to be frustrated and the possibility of great damage to the open market and resultantly, country’s economy cannot be ruled out”.²¹

The European Commission (EC)’s practice of accepting ‘commitment decisions’, which are binding on the party making them, without establishing an infringement, is a good example.²²

²¹ Competition Commission of India v. Steel Authority of India Limited, (2010) 10 SCC. 744.

²² Article 9, Regulation (EC) No 1/2003, Articles 101&102, Treaty on the Functioning of the European Union (TFEU).

The procedure for commitment decisions is generally shorter than the time taken for a detailed investigation and finding of infringement. This allows the EC to address identified competition concerns in a swift and effective manner, hence making it possible to quickly restore undistorted conditions of competition in the markets (EC, 2013). Similarly, the FTC rules also allow a party that is being investigated by the Commission to settle the charges made against it by signing a consent agreement, without admitting its liability.²³

The law in India does not confer explicit powers on the CCI to enter into such settlements. In the context of a settlement entered into between the parties pending an investigation before the CCI, the Court held that it is possible within the scheme of the Act to allow settlements and compromises to be reached between parties. This is subject to the Commission finding that such settlements would not (i) lead to the continuance of anti-competitive practices; (ii) allow the abuse of dominant position to continue; and (iii) be prejudicial to the interests of consumers or to the freedom of trade.²⁴ This case was decided in the context of the CCI's power to accept a settlement between the parties (the informant and the opposite party), and not one where an entity being investigated by the CCI directly offers a commitment to the Commission. While the CCI could very well read this authority into the wide powers conferred upon it under the Act, it would be useful for the Parliament to clarify this issue by laying down appropriate provisions for CCI's settlement powers in the Act.

COMMON OWNERSHIP OF COMPETING FIRMS

Taking the Indian scenario in hand, Tiger Global has invested in both Flipkart and Shopclues, businesses which compete directly with each other in the e-commerce marketplace business. It is also a large stakeholder in the online fashion retail segment, with five of the most-funded start-ups in this segment being in Tiger Global's portfolio.²⁵ Similarly, Nexus Venture Partners, another major investor in Internet businesses, holds a stake in competing firms

²³ FTC (2013). "Google Agrees to Change Its Business Practices to Resolve FTC Competition Concerns." <https://www.ftc.gov/news-events/press-releases/2013/01/google-agrees-change-its-business-practices-resolve-ftc>.

²⁴ Tamil Nadu Film Exhibitors Association v. Competition Commission of India, Writ Appeal 1806 & 1807/2013.

²⁵ Azar J, Schmalz MC, Tecu I (2015). "Anti-Competitive Effects of Common Ownership." Ross School of Business Working Paper No. 1235.

Snapdeal and Shopclues. Other examples include the investment by Norwest Venture Partners in Quikr and Sulekha (online classifieds) and Sequoia's investments in Zaakpay and Citrus (online payment gateways); Grofers and Peppertap (online grocery delivery); TinyOwl and Zomato (online food delivery) and Practo and 1mg (online doctor search).

Given the dynamic nature of online businesses, some of these may be cases where one portfolio company changed its business model after the investment was made, hence bringing it in direct conflict with another investment or removing such conflict.

A related issue concerns established global players making strategic investments in start-up ventures that are engaged in the same line of business. eBay's investment in Snapdeal²⁶, with both firms operating in the e-commerce marketplace in India, is a case in hand. China's Alibaba group presents another such example. It has invested in One97 Communications, the company that owns the PayTM²⁷ brand, and Snapdeal, entities that compete with each other in the e-commerce space in India. Minority shareholding in a competing firm or interlocking directorates could become another potential area of concern. Such arrangements "can have negative effects on competition, either by reducing the shareholder's incentives to compete or by facilitating collusion" (OECD, 2008)²⁸. To address these concerns, investors often choose to adopt internal systems that help in avoiding direct conflicts of interest, for instance, by not placing the same person on the board of directors of competing firms.

In the Continental Can case²⁹, the ECJ noted that Article 86 of the EC Treaty (now Article 102 of the TFEU, which is similar to Section 4 of the Act) could be used to prevent a dominant undertaking from abusing its dominant position by acquiring a competitor. If the position held by the undertaking is so dominant that the acquisition would seriously endanger consumers'

²⁶ Dalal Verma (2015). "Does eBay have a sweetheart deal with Snapdeal?" <http://www.livemint.com/Companies/7sYyArLcfy2CLmluhKDUOL/ Does-eBay-have-a-sweetheart-deal-with-Snapdeal.html>.

²⁷ Arora R (2016). "CCI to decide on cashbacks given by online payment platforms like PayTM and Mobikwik." http://economictimes.indiatimes.com/articleshow/52301239.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.com.

²⁸ OECD (2008). "Antitrust Issues Involving Minority Shareholding and Interlocking Directorates." Technical report, Organisation for Economic Co-operation and Development. <http://www.oecd.org/competition/mergers/41774055.pdf>.

²⁹ United States v. Continental Can Co., 378 U.S. 441 (1964).

freedom of action in the market, then the acquisition could in itself amount to an abuse of dominance, irrespective of any fault of the dominant undertaking.³⁰

PRESENT LAW AND CCI'S JURISPRUDENCE

(CCI on Retail Portals in the E-Commerce Sector)

The CCI has the mandate to look into both unilateral anti-competitive conduct, i.e. abuse of dominant position, and concerted action in the form of agreements or combinations (merger, amalgamation or acquisition of control) that cause an appreciable adverse effect on competition in India.³¹ Our focus here is mainly on the first category of cases. While CCI's jurisprudence on this subject is still evolving, there have been a few instances where practices of Internet-based businesses have been questioned before the Commission on grounds such as predatory pricing, exclusivity conditions and discriminatory tactics. So far, these cases relate to online e-commerce marketplaces, online taxi aggregation services and online search advertising.

ASCERTAINMENT OF RELEVANT MARKET

The foremost step in assessing an abuse of dominance claim is the ascertainment of a relevant market. In the framework of e-commerce, it can be argued that offline and online markets could be regarded as distinct markets and hence, online market alone may be featured as a relevant market.

First, in the Flipkart case³², CCI left at ease and in open, the question of whether e-portal markets may be regarded as a separate relevant product market or for distribution as a mere sub-segment of the market.³³ However, in the Snapdeal case³⁴, CCI clarified that both online and offline markets vary in terms of shopping experience and discounts. In a similar manner, buyers weigh the options available in both the markets and take their decision accordingly.

³⁰ *Europemballage Corp and Continental Can Co Inc. v. Commission*, ([1973] ECR 215).

³¹ Sections 19(3) and 20(4), Competition Act, 2002.

³² Kurian B, Sharma S (2014). "Let's merge, Flipkart tells Myntra."

³³ *Mr. Mohit Manglani v. M/s Flipkart India Pvt Ltd. & Ors.*, (Case No. 80/2014) [Flipkart Order], Para 18.

³⁴ *Ashish Ahuja v. Snapdeal and Ors.* (Case No 17/2014).

Therefore, if the price in online market rises significantly, then the consumer is likely to switch towards the offline market and vice versa.

RELEVANT PRODUCT MARKET

In the context of the online e-commerce businesses, the Commission observed that buyers tend to weigh the options available to them in offline and online markets before making a final decision, taking into account the differences in discounts and shopping experience.³⁵ A significant increase in price in one segment will cause the buyer to shift to the other segment. Therefore, “these two markets are different channels of distribution of the same product and are not two different relevant markets”.³⁶

In a similar vein, the CCI’s prima facie view in a case filed by the Real Estate Brokers’ Association of India against online platforms like Magic bricks, 99acres, Housing.com and others was that these online platforms and the off-line traditional brokers are offering similar services to customers and hence form part of the same relevant market.³⁷

In contrast, the CCI has, in its prima facie assessment of the several cases filed against Google alleging abusive practices in respect of its online search and search advertising businesses, delineated “the market for online search advertising in India as the relevant market” and prima facie found Google to be in a dominant position in that relevant market.³⁸

In case of taxi aggregation services, the CCI has held ‘radio cabs service’ to be a relevant market by itself, on the ground that consumers do not find such services to be substitutable with other modes of transport. It cited “convenience in terms of time saving, point-to-point pick and drop, pre-booking facility, ease of availability even at obscure places, round the clock availability, predictability in terms of expected waiting/ journey time etc.” as relevant characteristics of radio taxis, which are not available in other modes of road transport.³⁹

³⁵ Mohit Manglani v. Flipkart India Private Limited and others, (Case No 80/2014)/

³⁶ *id.*

³⁷ Confederation of Real Estate Brokers’ Association of India v. Magicbricks.com and Ors., Case No. 23/2016.

³⁸ Albion InfoTel Limited v. Google Inc and others, Case No. 46/2014.

³⁹ Fast Track Call Cab Private Limited v. ANI Technologies Pvt. Ltd., Case No. 6/2015.

However, in another case filed by Indian taxi company, Meru cabs, against Uber's alleging anti-competitive practices in the city of Kolkata, the CCI adopted a slightly different test. It looked at the active presence of metered yellow taxis in the city and concluded that in this case radio taxis and yellow cabs form part of the same relevant market.⁴⁰ In another case filed against Ola the informants had tried to define a market for 'paratransit services' in NCR, comprising of auto-rickshaws, black-yellow taxis and city taxis. This was rejected by the CCI on the grounds that there are certain differences in the comfort, time taken and consumer perception between these modes of transport and therefore 'radio taxi services' constitute a separate market.⁴¹

RELEVANT GEOGRAPHICAL MARKET

Defining the geographical market acquires an interesting dimension in cases where Internet platforms use the customer's or merchant's location as a useful matching tool. This sort of geographical segmentation helps in the efficient distribution of online goods and services, while also allowing for customisation. The CCI applied this logic in the taxi aggregation cases, to hold that the relevant geographic market was limited to the specific city in question. Firstly, on the ground that the operations of radio cabs are restricted to city limits. Secondly, because the regulatory architecture governing them also varies from one state to another. We conclude with two observations.

Competition authorities often lean towards a qualitative analysis for determining the interchangeability between products, without necessarily relying on consumer usage data or other quantitative factors. Accordingly, the more unique the 'characteristics' of a service or the more niche its 'intended use', the higher the possibility of it being regarded as not having any close substitutes.

The use of geo-location tools to ascertain the location of potential users and target services to them could also lead to such businesses being delineated as independent relevant markets on the basis that the competitive constraints faced by such businesses are location-specific.

⁴⁰ Meru Travel Solutions Private Limited v. Uber India Systems Pvt. Ltd, Case No. 81/2015.

⁴¹ Vilakshan Kumar Yadav and others v. ANI Technologies Private Limited, Case No. 21/2016.

DETERMINATION OF DOMINANCE

We turn to examining the factors used for determining the dominance of a firm. As per the Act, these factors to include, market share, size and resources of the firm, size and importance of competitors, vertical integration of the service network, market structure and entry barriers.⁴² In the recent Meru order,⁴³ the COMPAT has specifically brought out the fact that dominant position under the Act means a ‘position of strength’ but it “does not say that this position of strength necessarily has to come out of market share in statistical terms”. The Tribunal therefore urged the CCI to consider the question of dominance based on the overall picture of the radio taxi service market, including its funding status, global developments, network expansion strategies and associated discounts.

Very often, market shares of specialised streams of Internet-based businesses are not readily available and any self-reported information released by the market participants may also not be reliable.⁴⁴ Under such circumstances, market shares may need to be determined based on specially commissioned market reports, as seen in each of the taxi aggregation cases that have been brought before the CCI. The informants relied on reports prepared by research and analyst firms to assert the high market share, and hence dominance, of the opposite parties. In the case against Ola in Bangalore, the CCI relied on the informant’s submission (based upon reliance on certain public news reports) that after its acquisition of competing business Taxi Ola held 69 per cent market share in Bangalore. The Commission concluded that even though high market share was not the only factor to be considered, the fact that Ola had achieved a significantly high share in just 3 to 4 years of its operations did indicate a strong market position.⁴⁵

While dismissing the cases against Uber in Delhi and Kolkata the CCI noted that there was insubstantial proof of individual dominance of either Ola or Uber in the respective demarcated city markets and that there exists robust price competition between the two firms. The Commission, however, did not dwell further on the possibility of ‘double dominance’ in these

⁴² Section 19(4), Competition Act, 2002.

⁴³ Meru Travels Solutions Private Limited v. Competition Commission of India, Appeal No.31/2016

⁴⁴ Spectrum Sports, Inc. v. McQuillan, 506 U.S. 447, 456 (1993).

⁴⁵ Meru Travels Solutions Private Limited v. Competition Commission of India, Appeal No.31/2016.

markets - can two individual firms, without any economic linkages, be considered to be individually dominant in the same relevant market at the same time?

This discussion leads us to two observations. One, it is crucial that any market reports being used to assert dominance of an Internet-based business should follow a robust and consistent methodology of data collection, scrutiny and analysis. Two, there seems to be a reluctance on the part of CCI to call for the information from the respondents at the prima facie stage, even though doing so could have easily allowed the Commission to get a better approximation of their actual market shares.

The Act empowers the CCI with the statutory powers of a civil court, which includes summoning any person, production of documents and receiving evidence on affidavit.⁴⁶ Further, the CCI (General) Regulations, 2009 specifically provide that the CCI can hold a 'preliminary conference', inviting the information provider and any other person, if necessary to form a prima facie opinion in a case.

A similar issue came up in the Direct-to-home (DTH) services case,⁴⁷ where the informant argued that each of the DTH operators was individually dominant in the relevant market and had abused its dominant position. This contention was rejected by the Commission, observing that "Every single player in any relevant market cannot be said to possess such dominance. Individually, none of the DTH operators has dominant position in terms of Explanation (a) to section 4."

The Commission, however, observed in this case that "the concept of dominance does centre on the fact of considerable market power that can be exercised only by a single enterprise or a small set of market players".

UNFAIR AND PREDATORY PRICING

Having established the dominance of an enterprise, the next step is to assess whether it has abused that position in the manner stipulated under Section 4 of the Act.⁴⁸ For instance, where

⁴⁶ Section 36(2), Competition Act, 2002.

⁴⁷ Consumer Online Foundation v. Tata Sky Limited, Case No 02 of 2009.

⁴⁸ Section 4, Competition Act.

a dominant search engine uses its leadership in the online search business to strengthen its position in specific vertical markets, such as online video, hotel and map searches; or a dominant game console manufacturer restricts game producers from writing software for other competing companies, hence creating entry barriers for them. Imposing unfair or discriminatory prices in the purchase or sale of goods or services, including predatory pricing, is a form of abuse that is prohibited by the Act.

Predatory pricing is defined to mean the provision of goods or services, at prices below cost, with a view to reduce or eliminate competition. As per the CCI's (Determination of Cost of Production) Regulations, 2009, the Commission will generally look at the 'average variable cost' as a proxy for marginal cost to assess whether a firm is selling below cost.⁴⁹

In this context it would be relevant to note the following observation made by the ECJ in the Tetra Pak case: "it must be possible to penalize predatory pricing whenever there is a risk that competitors will be eliminated...The aim pursued, which is to maintain undistorted competition, rules out waiting until such a strategy leads to the actual elimination of competitors".⁵⁰

It would be interesting to see whether the CCI will choose to read in the requirement of recoupment of losses, which is not specifically mentioned in the Act, as a requirement for establishing predatory pricing in India. For instance, the dissenting order in the National Stock Exchange (NSE) case,⁵¹ where NSE's zero-pricing strategy was challenged on the ground of being unfair and predatory, expressed the view that in the facts of that case it was important to consider the element of recoupment.

CASE STUDY:

Re: Mohit Manglani v. M/S Flipkart India Private Limited and Others⁵²

{The effect of the order of the CCI on the Indian e-commerce market, especially the interpretation of the CCI of the relevant market and the impact of online retail business models on non-price and price competition}

⁴⁹ CCI's (Determination of Cost of Production) Regulations, 2009.

⁵⁰ Case C-333/94P Tetra Pak International SA v. Commission, [1996] ECR I-5951.

⁵¹ MCX Stock Exchange Ltd v. National Stock Exchange of India Ltd., Case No. 13/2009.

⁵² Mr. Mohit Manglani v. M/s Flipkart India Pvt Ltd. & Ors., (Case No. 80/2014) [Flipkart Order].

FACTUAL SCENARIO

As a result of information filed by Mr. Mohit Manglani (the "Informant"), the investigation was started against four major online retail players of the Indian e-commerce industry, namely, Jasper Infotech, Flipkart, Amazon, Xerion Retail, and Vector E-commerce (collectively, the "Opposite Parties").

The Opposite Parties, as alleged by the informant have been practicing in anti-competitive practices which is in violation of the Competition Act, 2002 (the "Act"), by means of exclusive distribution and supply agreements with sellers/manufacturers of services and goods. The Informant also prescribed that the Opposite Parties had enforced exclusive agreements for sale of specific products to the exclusion of other physical channels or e-portals.

It was alleged by the Informant that due to such exclusive arrangements, the Opposite Parties had gained a product specific monopoly, i.e., each of the Opposite Parties had maintained 100% dominance in the market for those goods that were exclusively put up on sale on their portals. This allowed them, according to the Informant to control prices and levy other terms and conditions prejudicial to the interest of the consumers. Their chief grievance was that the practices acquired by these companies were letting out these proprietors of business.

To undertake the present concerns in the market, the CCI decided to take into account a similar complaint filed by the All Delhi Computer Traders Association ("ADCTA") against the Opposite Parties in December 2014.

As alleged by the ADCTA, the Opposite Parties were abusing their dominant position in the market to impose resale and quantity restrictions, which affected the dealers and distributors operating in the physical market. The CCI heard the ADCTA, alongside the Opposite Parties and the Informant, to arrive at its prima facie viewpoint in this case.

STAND TAKEN BY THE OPPOSITE PARTIES

It was contended by the opposite parties that the relevant market in question cannot be interpreted as product specific for each exclusive dealing agreement, per se, as the relevant market for a product also incorporates its close substitutes. Hence, products which were able to exercise a price constraint on such products would also constitute a part and parcel of the relevant product market.

It was further contended that organized retail market of India accounts for merely 8% of the retail market of India, and online retail being a subset of the organized retail market, its market share is not weighty enough to constitute a dominant position.

With reference to their exclusive arrangements with suppliers and manufacturers, it was alleged by the Opposite Parties that such vertical agreements⁶ were not presumed to have AAEC.

Therefore, it was contended by the Opposite Parties that the exclusivity of their alleged vertical agreements, was restricted to the exclusion of other online portals, and did not prevent the supplier/manufacturer to sell their product on their own websites.

ORDER OF THE COMPETITION COMMISSION OF INDIA

The CCI concurred with the Opposite Parties in holding that the relevant market could not be product specific as it incorporates all substitutes of a product. Therefore, it cannot be said that the Opposite Parties were 100% dominant in the market for those products which were exclusively marketed by them. The CCI went on to state that, irrespective of whether the online retail market is considered to be a subset of the retail market or a separate relevant market, none of the Opposite Parties can be said to be dominant individually, given the horde of e-portals in the market which offer similar facilities. Based on this logic, the CCI declined to further comment on allegations of abuse of the alleged dominance of the Opposite Parties.

The CCI concluded by evaluating the impugned exclusive agreements on the touchstone of the factors laid down under Section 19(3) of the Act, that any exclusive arrangement between an e-portal and a manufacturer does not seem to generate any entry barriers in the market. Furthermore, the availability of substitutable products brings into being sufficient competitive constraints so as to avert any scope of dominance or monopoly. The CCI, in fact, noted that new e-portals are invading into the market which rather states a growth in competition.

The key findings of the CCI in reference to the effect that the Opposite Parties have on competition in the retail market can be concluded as follows:

(i)The relevant product market marketed through an e-portal is not product specific, but incorporates all its substitutes which can exercise a constraint on the pricing of such product. The exclusive marketing arrangements between manufacturers/suppliers and e-portals do not

fabricate any entry barriers in the market, as the suppliers/ manufacturers have the liberty to sell their products in the physical market as well as on their own websites.

(ii) The accessibility of a large number of substitutable products, accompanied with the multitude of companies operating e-portal services in the market, is enough to put a stop to the dominance of any single entity in this sector.

(iii) Infact, e-portals enhances price transparency, permitting consumers to make a more informed decision, and thereby improve competition.

ONLINE SALES & DISCOUNTS

"If you're competitor-focused, you have to wait until there is a competitor doing something. Being customer-focused allows you to be more pioneering." - Jeff Bezos, CEO of Amazon

Assuredly, the modern consumer is residing in an era of big billion-day sales.⁵³ Such deep and huge discounts which are proffered by online players has secured the wrath of online traders who put their grievance forward that their shops are being narrowed down to mere show-rooms where consumers pay a visit to the shops, seek for specifications, inquire about product details and utility of the service/ perform, but prefer to discharge the actual purchase and sale of the services and platforms on the online platforms, which proffer (anti) competitive cheaper prices.

Many Cases have been initiated before the Competition Commission of India against players which includes Snapdeal, Flipkart, Jabong, Amazon and Myntra for practicing in predatory pricing. However, CCI has refused such claims at some prima- facie level as none of these entities were seen and found to be dominant in the retail market. It is interesting how the demarcation of relevant market becomes a chief issue here. For a claim of predatory pricing to triumph over the e-tailors, they must be found to be dominant in the market space in which they are functioning. However, since the Commission in its previous orders had observed that online market is only a channel of distribution rather than a relevant market in itself, the dominance of any e-tailor is condensed to a miniscule.

⁵³ Undeterred Flipkart gears up for next Big Billion-Day sale; event to be many times bigger than the previous one, THE ECONOMIC TIMES, (January 31, 2015), available at: http://articles.economictimes.indiatimes.com/2015-01-31/news/58650592_1_big-billion-day-billion-day-sachin-bansal.

The scale of these discounting practices, and the periods for which they are sustained, has produced new barriers to competition. It is difficult to extenuate these sustained losses as being an introductory proffered by a new player. Rather, these practices surface to be a systematic competitive strategy. Capital, which has become a competitive weapon gives rise to some issues that the market may ultimately tip in favour of the player that may not necessarily have the most innovative service or product, but one that succeeds in enticing more users in the early days, using subsidies and obtaining more capital. While seeming instrumental for consumers in the short run, such practices advances concerns about competition on account of elevated prices and creation of market power for consumers in the next few years when losses are recouped.

In the case of Jasper InfoTech Private Limited (Snapdeal) v. Kaff Appliances (India) Private Limited (Case No. 61 of 2014), the Competition Commission of India had made out a prima facie case against a company which was engaged in selling and manufacturing of kitchen appliances and ordered investigation by the Director General in the matter.

In the concerned case the information was brought by Jasper Infotech Private Limited before the Competition Regulator which operates the e-commerce portal Snapdeal against Kaff appliances. It was alleged by the Informants that Kaff appliances exhibited a 'Caution Notice' on its website declaring that its products sold by Snapdeal were not authorised by it and were therefore fake. It was also mentioned in the 'Caution Notice' that the alleged e-commerce portal was also duping the public with an intention to sabotage the image of its company. Hence the company threw a light on its stand through the said notice of not fulfilling the warranties of the kitchen appliances sold through the online portal and thereby, also served a legal notice in this reference to the e-commerce portal.

On this the e-commerce portal stated that it was merely an online market place and does not indirectly or directly sells any products. Hence, the portal being the facilitator, the manufacturer or its agents bear the commercial risks and directly raise invoices to the customer.

The foremost issue of contention amongst the parties was the discounted price at which the e-commerce portal was selling away the Company's kitchen appliances. It was below the Market Operating Price which the company selling the appliances wanted its retailers to hold. The Competition Commission of India opinionated that any arrangement which was entered into between the company and its' dealers in kitchen appliances will be covered under the

provisions of section 3(4) of the Act. Further the authorization of Market Operating Price by the company to its dealers and a command to follow the said pricing regime prima facie contravened section 3(4) (e) read with section 3(1) of the Act.

Hence in the present case, the Commission observed that Kaff appliances held 28 percent share in the market of ‘distribution and supply of kitchen appliances in India’ and the agreement which was entered into with its dealers, prima facie may have both unfavourable effect on competition in India and harm consumers ultimately.⁵⁴

In March, 2016, the Foreign Direct Investment (FDI) guidelines rotated the spotlight on pricing practices of e-commerce firms. It was clarified that the automatic route of foreign investment would be accessible only to those e-commerce marketplaces that abstained from influencing sale prices and aided to maintain a level playing field.⁵⁵

In a few recent cases, these concerns have also come to the attention of the Competition Commission of India (CCI).⁵⁶ More recently, the Competition Appellate Tribunal (COMPAT) commanded the Director General of the CCI to initiate alike investigation to examine Uber’s dominance in the market in the National Capital Region (NCR) of Delhi for radio taxi services after the CCI had declined such an investigation.⁵⁷ Uber has now confronted this decision before the Supreme Court, by citing a “jurisdictional flaw” in the Tribunal’s capacity to order such an investigation. An in-house panel is also reported to have been set up by CCI to apprehend the cash-back incentives being presented by various online companies from the viewpoint of predatory pricing provisions under the Competition Act, 2002 (Act).

COMPETITION COMMISSION OF INDIA (Combination Registration No. C-2017/05/505)

⁵⁴ Jasper InfoTech Private Limited (Snapdeal) v. Kaff Appliances (India) Private Limited. Case No. 61/2014 at Para 6.

⁵⁵ Guidelines for Foreign Direct Investment on E-Commerce, Press Note 3 (2016 Series), DIPP, 29 March, 2016.

⁵⁶ Fast Track Call Cab Private Limited v. ANI Technologies Pvt. Ltd., Case No. 6/2015, CCI order dated 24 April, 2015.

⁵⁷ Meru Travels Solutions Private Limited v. Competition Commission of India, Appeal No.31/2016, COMPAT order dated 7 December, 2016.

(Notice under Section 6 (2) of the Competition Act, 2002 jointly given by eBay Singapore Services Private Limited and Flipkart Limited)⁵⁸

Order under Section 31(1) of the Competition Act, 2002

On 5th May 2017, the Competition Commission of India (“Commission”) received a notice jointly given by eBay Singapore Services Private Limited (“eBay Singapore”) and Flipkart Limited (“Flipkart”) under sub-section (2) of Section 6 of the Competition Act, 2002 (“Act”). The notice has been filed pursuant to Subscription Deed entered into between Flipkart and eBay Singapore and Share Purchase Agreement entered into between Flipkart and eBay India Private Limited (“eBay India”) each dated 10.04.2017 (hereinafter eBay Singapore, eBay India and Flipkart are collectively referred to as “Parties”).

The proposed combination consists of the following inter-connected steps: (i) subscription by eBay Singapore of newly-issued compulsorily convertible preference shares (“CCPS”) to be issued by Flipkart; and (ii) acquisition of 100 per cent equity share capital of eBay India by Flipkart. After the completion of the above two steps, eBay Singapore will hold about 6.2 per cent shares (on a diluted basis) in Flipkart and eBay India will become a wholly-owned subsidiary of Flipkart. (“Proposed Combination”). The Proposed Combination has been filed under sub-section 2 of Section 6 read with Section 5(a)(i)(A) of the Act.

The Commission observed that eBay Singapore (through eBay India) and Flipkart are engaged in providing marketplace-based e-commerce platforms to facilitate transactions between customers and sellers i.e., business to consumer (“B2C”) transactions in India. Therefore, there exists a horizontal overlap between the business operations of the Parties.

The Commission noted that in the “Overall B2C Market” in India (including both offline and online segments), Flipkart and eBay India have a market share of 0-5% each. At the level of its sub-segment i.e. the ‘Online B2C Market’ in India, Flipkart has a market share of 15-20% and eBay India has a market share of 0-5%. In view of the fact that the incremental market share is not significant either at the level of ‘Overall B2C’ market or its sub-segment i.e. “Online B2C’ market, the exact definition of the relevant market is left open.

⁵⁸ Order under S. 31(1) of the Competition Act, 2002, available at http://www.cci.gov.in/sites/default/files/Notice_order_document/C-2017-05-5050.pdf.

The Commission noted that the Parties are not engaged in any vertical relationship in India.

Considering the facts on record and the details provided in the notice given under sub-section (2) of Section 6 of the Act and on basis of the assessment of the proposed combination, the Commission is of the opinion that the proposed combination is not likely to have appreciable adverse effect on competition in India and therefore, the Commission, hereby, approves the same under sub-section (1) of Section 31 of the Act.

PROPOSALS

(Grounds for concern about the harm to competitive dynamics from these new business strategies and to avoid intrusive interventions that bring the State into excessive involvement in the world of business)

First of all, there is an essentiality to take into account the distinctive features of economy of specific high-technology businesses when scanning into the allegations of anticompetitive conduct by them. Practices like cash back offers and deep discounting may be aimed at structuring sufficient scale in the market to secure that the business is able to fully seize tomorrow's market, to the embargo of other competitors. A robust analysis of economics of the effect of increasing returns to scale, and network effects, is necessitated for understanding the future and present impact of these practices on consumer and competition interests.

Second, we assess the question about consumer gains from discounting. It is suggested that the gains in the short term should be seen in a larger context. The recoupment test scans the extent to which market power can be attained in the future, after which prices can be increased. If the Commission were to sanction this test in investigations in relation to predatory pricing by online firms, it would see that in specific areas, there are network effects, and once a small cartel of firms has appropriated upon the market power, it would be extremely difficult for entrants to compete with them in the future. In that future scenario, it would be possible for incumbents to recoup earlier losses and increase prices.

Third, the CCI in appropriate cases could depend on the 'essential facilities doctrine' to mandate interoperability between a dominant player that is found to be practicing in the abuse of its position and other operators in the market. For example, imposing interoperability

requirements on a dominant payments network can help expand the network effects of digital payments to the economy as a whole, rather than being restricted to a closed network. However, the imposition of any such requirements will need to be balanced against factors such as the complexity of institutional arrangements required to monitor such arrangements, payment of reasonable and fair access fees, and assessment of the impact on future innovation.

Fourth, given the fast-changing nature of online businesses, there are issues about the elapsed time between the determination of a violation and a full-fledged investigation. It is suggested that a two-pronged approach should be used to address this issue. On one hand, the CCI needs to upgrade its' work towards adopting stricter time frames for the discharge of cases, particularly those relating to new economy firms. On the other, I propose a settlement process that should be voluntary which will permit a business that is under investigation to voluntarily change and modify its market behaviour, with the agreement of the authority but without the need for a conclusive finding of violation by the Competition Commission of India.

CONCLUSION

Internet mediated Ecommerce, although in its emerging stage in India, has grown at a rapid pace recently. The innovations they bring to the market can spur competition, enlarge markets and enhance consumer welfare. At the same time, it can disrupt traditional Brick and Mortar retail stores. The techniques of price discounting, exclusive distribution and so on, often used by Ecommerce firms have come under the scrutiny of competition authorities for potential anticompetitive behaviour. E-commerce presents new challenges for competition law enforcement. As the competition authorities examine these cases it is pertinent to inquire whether the present structure of competition law is flexible enough to consider these various challenges and deal with the same without discouraging efficient behaviour or new investment. Various market regulators have been keeping a close eye on the operational dynamics of the entities operating in the e-commerce market. Moreover, the recurring grievances of the brick and mortar shops against their online counterparts in the retail market, implores the Indian competition authorities to look into the competition repercussions of such business practices. In such a scenario, the CCI's effort to put to rest certain basic questions pertaining to the commercial practices of such online retail companies is laudable.

By passing this order the CCI has reaffirmed the fact that the objective of the Act is to protect "competition" and not the "competitors".

