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**DIGITAL MARKET, DATA ANALYSIS AND THE SUBSEQUENT: Competition  
Law Challenges in Cyberspace in India**

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## Contents

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Volume IV	ISSN: 2582-1903	April 2020 - March 2021
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<i>Special Article</i>	<i>Page</i>
1. GENEALOGICAL AND ANALYTICAL CRITIQUE OF THE NATIONAL EDUCATION POLICY, 2020: The Rich Heritage of Indian Knowledge, Social Traditions, and the Problem of Social Order <i>Chanchal Kumar Singh &amp; Mritunjay Kumar</i>	1
 <i>Articles</i>	
2. RECHTSTAAT OF POPULIST AUTHORITARIANISM: Paradoxes of the Constitution in Authoritarian Regimes <i>Niraj Kumar</i>	41
3. THE IMPERATIVE OF EMPIRICAL RESEARCH METHODOLOGY IN LEGISLATIVE DRAFTING AND CONDUCT OF RESEARCH IN LAW <i>Tonye Clinton Jaja &amp; Chukwuka Onyeaku</i>	59
4. EXORCISING THE COLONIAL GHOST IN CLASSROOMS: Contextualising Teaching of International Law in the Geographical South <i>Manwendra K. Tiwari &amp; Swati Singh Parmar</i>	77
5. DIGITAL MARKET, DATA ANALYSIS AND THE SUBSEQUENT: Competition Law Challenges in Cyberspace in India <i>Anand Pawar</i>	97
6. CONSTITUTIONAL MORALITY IN INDIA: A Brief Analysis & Contextualising its (De)Limitations <i>Vibhuti Jaswal &amp; Aayush Raj</i>	113
7. EMERGING NORMS OF INTERNATIONAL LAW AND CYBER-WARFARE: A Critical Analysis <i>Veer Mayank &amp; Nidhi Saxena</i>	130

8. A STUDY OF THE LEGAL PROTECTION OF TRADITIONAL INDIGENOUS KNOWLEDGE OF NORTHEAST INDIA: A Legal Approach  
*Partha Sarothi Rakshit, Karobi Dihingia & Soumyadeep Chakraborti* 152
9. THEORISING THE EFFECT OF STIGMATISATION ON THE CRIMINAL JUSTICE SYSTEM: Normalizing Prison Sentences  
*Mehreen Manzoor* 170
10. COMBATING SEXUAL VIOLENCE AGAINST WOMEN WITH DISABILITIES IN INDIA: A Brief Conspectus of the Legal Framework  
*Monica Chaudhary* 189
11. POLITICAL TERRORISM & POLITICAL CRIME VIS-À-VIS CRIMINALIZATION OF POLITICS: A Critical Analysis of the Efforts of Indian Judiciary in Preserving the Democratic Values  
*M.R. Sreenivasa Murthy & K. Syamala* 217

*Notes and Comments*

12. TEXT, CONTEXT, AND HUMAN RIGHTS-BASED INTERPRETATIONS BY DOMESTIC COURTS  
*Deepa Kansra & Rabindra Kr Pathak* 241
13. SURROGATE MOTHERHOOD IN INDIA: An Analysis of Surrogacy (Regulation) Act, 2021  
*Paramjit S. Jaswal & Jasdeep Kaur* 257
14. THE CONTROVERSY SURROUNDING THE PLACES OF WORSHIP ACT, 1991: Challenges against Democracy, Secularism, and the Cherished Principles of Constitution  
*Shreshth Srivastava & Vaishali Gaurha* 269

# DIGITAL MARKET, DATA ANALYSIS AND THE SUBSEQUENT: Competition Law Challenges in Cyberspace in India

*Anand Pawar\**

*[Abstract: The cyberspace has altered the way humans interact and live. This new space has also opened vistas of opportunities on multiple fronts. One of the most visible impacts of cyberspace is the way businesses are done. However, with this changing form of business and the use of tools for data analysis for big data (collected by companies working in cyberspace), there has been a significant negative impact on market, in terms of having a dominance in the market and violating the rules of competition law. Google, one of the biggest conglomerates, from across the globe is facing many competition law related issues. In this backdrop, this article highlights some of the major issues associated with the current competition law jurisprudence in India and the need for the change by the legislature for strengthening and dealing with issues of competition by such conglomerates.]*

**Keywords:** *Cyberspace, digital marketing, competition law, anti-trust law, big data, data analysis, Google, Facebook, Competition Commission of India, CCI, etc.*

## I

### Introduction

The rise of digital markets has had a significant impact on competition law. One major change is the increased importance of collection of data and data analysis in competition cases.<sup>1</sup> Digital markets generate vast amounts of data, which can be used to identify and analyze market structures and competitive dynamics. This data can also be used to detect and prove anti-competitive conduct, such as collusion and price fixing.<sup>2</sup> Another change fostered by the rise of digital markets is the increased focus on the role of platform companies in digital markets. These companies, such as Google and Facebook,

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<sup>1</sup> Megan Case, *Google, Big Data & Antitrust*, 46 DELAWARE JOURNAL OF CORPORATE LAW 189 (2022).

<sup>2</sup> Ankit Srivastava & Aditi Richa Tiwary, *Competition Law in Asia: The Interplay of Power Dynamics in the Digital Market*, 8 LENTERA HUKUM 295 (2021).

often control access to large amounts of data and have significant market power.<sup>3</sup> This has led to increased scrutiny of these companies and their practices under competition law.

Additionally, the rise of digital markets has also led to the emergence of new forms of competition, such as network effects and multi-sided markets, which can be challenging to analyze under traditional competition law jurisprudence.<sup>4</sup> This has led to calls for updates to competition laws to better address these emerging forms of competition. Overall, the rise of digital markets has resulted into a significant shift in the competition law landscape, with a greater emphasis on data analysis and the role of platform companies, as well as the need to adapt traditional competition laws to the new forms of competition.<sup>5</sup>

One key challenge is determining market power in digital markets, as the barriers to entry and the nature of competition are often different than in traditional markets.<sup>6</sup> For example, a company with a large user base and data advantage, such as Facebook or Google, may have significant market power even if there are other players in the market.

Yet another challenge is addressing anti-competitive conduct in digital markets. Traditional forms of collusion and price fixing may be difficult to detect and prosecute in digital markets, as firms can use algorithms and data to monitor and respond to competitors' actions in real-time.<sup>7</sup> Additionally, digital platforms may engage in self-preferencing, where they favor their own products or services over those of competitors, which can also be difficult to detect and address.

Another challenge is the potential for digital companies to use data to discriminate against competitors. In the EU, the General Data Protection Regulation (GDPR) and the e-Privacy Directive include provisions to protect competition by preventing companies from using personal data to gain an unfair advantage over competitors.<sup>8</sup> However, it's difficult to enforce these provisions in practice, and there is a need for more specific regulation to tackle this problem. There is the issue of cross-border competition in digital markets. Digital companies often operate globally and may be subject to different competition laws in different jurisdictions. This can make it difficult for competition

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<sup>3</sup> Dr. Tilottama Raychaudhari, *Abuse of Dominance in Digital Platforms: An analysis of Indian Competition Jurisprudence*, 1 CCI JOURNAL ON COMPETITION LAW AND POLICY 1 (2020).

<sup>4</sup> Ankit Srivastava & Divyansha Kumar, *Digital Economy, Data and Dominance: An Indian Perspective*, 2 CCI JOURNAL ON COMPETITION LAW AND POLICY 97 (2021).

<sup>5</sup> Erman EKİNGEN, *An Overview of the Concepts of 'Digital Economy' and 'Digital Markets' as ongoing trends in EU Competition Law*, 30 SELÇUK LAW REVIEW 1934 (2022).

<sup>6</sup> *Id.*

<sup>7</sup> OECD, *ALGORITHMS AND COLLUSION: COMPETITION POLICY IN THE DIGITAL AGE* (2017).

<sup>8</sup> Tuulia Karjalainen, *The battle of power: Enforcing data protection law against companies holding data power*, 47 COMPUTER LAW & SECURITY REVIEW 1 (2022).

authorities to effectively enforce their laws and can lead to conflicting decisions.<sup>9</sup> This issue calls for increased international cooperation between competition authorities.

Digital markets present a number of challenges for competition law enforcement, including determining market power, addressing anti-competitive conduct, preventing data-based discrimination, and addressing cross-border competition.<sup>10</sup> These challenges highlight the need for ongoing updates and strengthening of competition laws, as well as increased international cooperation between competition authorities.

Google, one of the world's largest and most powerful technology companies, has faced antitrust challenges in several jurisdictions around the world, including India. These challenges stem from concerns about the company's dominant market position and alleged anti-competitive practices.<sup>11</sup>

Google has met a number of competition law cases for alleged violations of competition law in various countries. In the European Union, Google has been the subject of several antitrust investigations over allegations of anti-competitive behavior.<sup>12</sup> In 2017, the EU imposed a record fine of €2.42 billion on Google for favoring its own comparison-shopping service in its search results.<sup>13</sup> In 2018, the EU also imposed a fine of €4.34 billion on Google for anti-competitive practices related to its Android operating system.<sup>14</sup> In India, Google has been investigated for alleged abuse of its dominant position in the online search market. In the United States, Google has faced scrutiny from the Federal Trade Commission and the Department of Justice over potential antitrust violations. It is important to note that these investigations and fines are not conclusive evidence of illegal behavior, and Google has denied any wrongdoing.<sup>15</sup>

In light of the same, this paper deals with the challenges posed by the digital market on antitrust agencies across the globe. The paper shall also discuss the characteristics of

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<sup>9</sup> APEC, *COMPETITION LAW AND REGULATION IN DIGITAL MARKETS* (2022).

<sup>10</sup> Lina M Khan, *Amazon's Antitrust Paradox*, 126 *YALE LAW JOURNAL* (2017).

<sup>11</sup> *Id.*

<sup>12</sup> Zahide Altunbaş Sancak, *European Union: EU General Court Largely Upholds Google's Record Android Penalty*, *MONDAQ* (Sep. 30, 2022), available at: <https://www.mondaq.com/uk/antitrust-eu-competition-/1231964/european-general-court-largely-upholds-record-eu-antitrust-fine-against-google-for-abusive-restrictions-cementing-its-dominance> (last visited 12 Dec., 2022).

<sup>13</sup> James Vincent, *Google fined a record Euro 2.4 Billion by the EU for manipulating search results*, *THE VERGE* (Jun. 27, 2017), available at: <https://www.theverge.com/2017/6/27/15872354/google-eu-fine-antitrust-shopping> (last visited 20 Dec., 2022).

<sup>14</sup> Natasha Lomas, *Google fails to overturn Eu's Euro 4BN+ Android Antitrust decision*, *TECH CRUNCH* (Sep. 14, 2022), available at: <https://techcrunch.com/2022/09/14/google-eu-android-antitrust-appeal-ruling/> (last visited 20 Sep., 2022).

<sup>15</sup> Manisha Singh, *India orders antitrust investigation against Google over smart TV market*, *TECH CRUNCH* (Jun. 2021), available at: <https://techcrunch.com/2021/06/22/india-orders-antitrust-investigation-against-google-over-alleged-abuse-of-androids-dominance-in-smart-tv-market/> (last visited 27 Aug., 2022).

digital markets and various competition issues relating to these issues. The paper will focus on Google as it has the maximum number of cases of competition law violation across various jurisdictions.

## II

### Characteristics of Digital Markets

A digital or online economy is one that was built on technology and that relies on data processing and communication to function.<sup>16</sup> High levels of innovation, low marginal costs, and network effects characterise the digital economy. In this data-driven industry, the player must use technical improvements to attract clients in order to obtain a competitive edge.<sup>17</sup> Due of the amount of technology used, several platforms have numerous means to contact clients, which appears to be advantageous for competition. Customers' ease of access to digital information has inspired many new competitors to expand their business options. Facebook, YouTube, and other platforms let people create their own content, which promotes creativity.

The digital economy is platform-based and primarily uses three business models.<sup>18</sup> One, is the over-the-top (OTT) model, where the user pays for the services (Amazon Prime, Sony Liv, etc.); the second is the advertising model, where the user generates revenue indirectly by viewing an advertisement (YouTube, Google, etc.); and the third is the access model, where content producers pay the platform to reach users (Play Store, Zomato, App Store, etc.).

The traditional market dynamics have been dramatically altered by the digital economy. The necessity of having a presence in the online market has been recognised by brick-and-mortar stores. As they manage Big Data and strategize the market for decision makers, data scientists are the new in-demand professionals in the market. Disruption is the new invention, and for firms to survive in the market, they must either challenge each other or combine.<sup>19</sup> To preserve their dominance in the market, the expanding tech giants have brought a tonne of minor start-up companies throughout the years.<sup>20</sup> The

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<sup>16</sup> *Supra* note 2.

<sup>17</sup> Inge Graef, *Market definition and market power in data: The case of Online Platforms*, 38 WORLD COMPETITION LAW AND ECONOMICS REVIEW 473 (2015)

<sup>18</sup> Rushil Anand, *CCI Study on Telecom Market – Key Observations*, INTELLECTECH LAW, (2021), available at: <https://www.intellectechlaw.com/post/cci-study-on-the-telecom-market-key-observations> (last visited 27 Nov., 2022).

<sup>19</sup> *Supra* note 4.

<sup>20</sup> Chris Alcantara *et al.*, *How Big Tech got so Big: Hundreds of acquisition*, THE WASHINGTON POST (Apr. 21, 2021), available at:

large corporations want to expand their business into a number of different industries, and they want users of their platform to take advantage of the various business opportunities that platform offers. For instance, Amazon began as a retailer but today engages in a variety of commercial endeavours, such as platform, shipping, payments, entertainment, lending, etc.<sup>21</sup> It's critical to explain the key words pertaining to the digital economy and how it operates in order to comprehend how the digital economy affects competition law.

### *Two Sided Markets*

In a two-sided market, there are two distinct groups of consumers who depend on one another to survive. Take Amazon as an example, which serves as a middleman to link customer demand with producer supply. Maintaining users on both sides of the platform is crucial, much to how Uber operates. If cab passengers decline, it will have an adverse effect on cab service suppliers.<sup>22</sup> If the platform may affect the volume of transactions by increasing prices on one side and decreasing them on the other by an equal amount, the market is said to be two-sided. To put it another way, platforms must build their price systems in a way that appeals to all sides.<sup>23</sup> Two-sided market platforms typically have three main functions: first, they act as intermediaries to promote exchange and make it simpler for members of each group to connect with one another; second, they build customer bases, increasing the likelihood that members of one group will find the right match; and third, they provide shared resources and lower the cost of providing services to both groups of consumers.<sup>24</sup>

### *Economies of Scale*

The benefits that result when the size of a single operating unit that produces a single good, lowers the cost of production per unit, generally understood as economies of scale. The costs of producing goods and services in the digitalized market have a high fixed cost and very little variable cost. As manufacturing volume increases and the price per unit falls, scale production income rises as the average cost per unit falls.<sup>25</sup> For instance, the development of the platform where taxi drivers and passengers communicate requires simply technical costs for taxi apps like Uber and Ola. The

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<https://www.washingtonpost.com/technology/interactive/2021/amazon-apple-facebook-google-acquisitions/> (last visited 20 Dec., 2022).

<sup>21</sup> *Supra* note 10.

<sup>22</sup> Miranda Bogen, *Uber and the taking economy: The dynamics of two – sided markets and algorithmic exploitation*, *MEDIAN* (Mar. 16, 2017), available at: <https://medium.com/equal-future/uber-and-the-taking-economy-b75d0b978bf8> (last visited 20 Dec., 2022).

<sup>23</sup> Jean-Charles Rochet & Jean Tirole, *Two-Sided Markets: A Progress Report*, *RAND J. ECON.* (2006)

<sup>24</sup> David S Evans, *Platform Economics: Essays on Multi – sided markets*, *COMPETITION POLICY INTERNATIONAL* (2011).

<sup>25</sup> Garima Sodhi, *Relevant Market and Market Power in Ride Sharing Industry*, *COMPETITION AND REGULATION IN INDIA* 149 (2020).



company invests money on GPS and pricing algorithms, but other than that, all other costs are covered by the taxi drivers, who receive incentives based on how many rides they offer. As a result, the platform's only fixed cost is setting it up, and after that, its variable cost is minimal. Economies of scale might be internal or external to a factory, business, or industry, static or dynamic, etc. Economies of scale may be found in manufacturing as well as possible pursuits like marketing, management, distribution, and research.<sup>26</sup>

### *Networks Effect*

By luring clients with various innovations, a market participant can get a competitive edge, and for this reason, the players are concentrating more on the networks impact.<sup>27</sup> In a two-sided market where users on either side of the platform benefit from an increase in users on the other side, network effects are primarily very significant.<sup>28</sup> Users of the Uber cab app, for instance, would like a big number of drivers as it will cut down on waiting times and produce better services. In a similar vein, drivers would also like that many people book cabs through the app so that they may increase their revenues. There will be greater advantages for people on the other side of the platform as there are more users on one side. These platforms accept losses in exchange for the creation of a network effect that benefits both parties.

### *Algorithm*

The market's participants extensively rely on algorithms to monitor, anticipate, and create business models.<sup>29</sup> Since algorithms provide precise data, preferences, quicker judgements, etc., they are preferred to human labour. These algorithms are employed by the platforms to generate suggestions based on user preferences. Many platforms benefit from targeted advertising.<sup>30</sup>

An algorithm is a predetermined set of simple actions that are repeatedly executed upon a group of objects. It is composed of flow of instructions that must be followed in a particular order to finish a task, improve corporate assessments, and organise the

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<sup>26</sup> Bharti Basu, *Economies of Scale and Imperfect Competition*, 1 INTERNATIONAL ECONOMICS, FINANCE AND TRADE (2019).

<sup>27</sup> Smriti Parsheera, Ajay Shah, and Avirup Bose, *Competition Issues in India's Online Economy*, NATIONAL INSTITUTE OF PUBLIC FINANCE AND POLICY, WORKING PAPER (2017), available at: <https://nipfp.org.in/publications/working-papers/1786/> (last visited 20 Oct., 2022).

<sup>28</sup> Carl Shapiro & Hal R. Varian, *INFORMATION RULES: A STRATEGIC GUIDE TO THE NETWORK ECONOMY*, HARVARD BUSINESS SCHOOL PRESS (1999).

<sup>29</sup> Soumya Hariharan, Sakshi Agarwal and Akrathi Shetty, *Antitrust Implications of Algorithmic Collusion*, NLS BUSINESS LAW REVIEW (2020), available at: <https://nlsblr.com/antitrust-implications-of-algorithmic-collusion/> (last visited 30 Dec., 2021).

<sup>30</sup> Abir Roy, *Competition Law in Digital World: Understanding the Frontiers*, SUNDAY GUARDIAN (Jul. 18, 2020) available at: <https://www.sundayguardianlive.com/legally-speaking/competition-law-digital-world-understanding-frontiers>. (last visited 30 Dec., 2021).

competitive differentiation tools.<sup>31</sup> The platform players mostly use algorithms to forecast the future based on historical data, giving the business a competitive edge and allowing prices to be set in accordance with the market's conditions, consumer preferences, and purchasing power.

The use of pricing algorithms has increased supply side efficiencies for participants in digital platforms. The optimal price for a particular customer is produced by pricing algorithms through trial and error as well as by identifying trends in the vast amount of data. A single product's pricing on Amazon fluctuated by nearly 240% in a single day.<sup>32</sup> Depending on a number of variables, two consumers with different profiles may pay different rates for the same commodity. These systems may use a variety of computational pricing criteria, and the consumer may never fully understand them. The cost of stock, festival season, availability of the goods in comparison to demand, rivals' pricing changes, prior prices of the product and maximum purchases, etc. may all affect the costs.<sup>33</sup> Pricing algorithms are created to generate the greatest profits possible through price differentiation.<sup>34</sup>

### *Deep Discounting*

Most firms that enter the digital market engage in deep discounting, which involves giving out substantial discounts, however it is frequently questioned whether this practise is morally right. In 2016, Reliance Jio joined the distant portable mobile network services industry and provided a year of free calls and internet to its users. Due to the disruption of the telecom sector, Airtel filed a lawsuit accusing competitors of unfair pricing and forcibly saturating the market. Reliance Jio, however, was not a significant player in the arrangement's structure because, according to specialised organisations, its stake of the primary telecom business was only 7%. The commission observed, '*In a competitive market scenario, where there are already big players operating in the market, it would not be anticompetitive for an entrant to incentivize customers towards its own services by giving attractive offers and schemes. Such short-term business strategy of an entrant to penetrate the market and establish its identity cannot be considered to be anti-competitive in nature...In view of the foregoing discussion, the Commission is of the considered view that no prima facie case of contravention of Section 4(2)(a)(ii) of the Act is made out against Jio.*'<sup>35</sup> In order to attract new customers and create the network effect, a significant number of online players have started to use severe limitations, cash back incentives, and other tactics. The market has gone digital, which has demonstrated that data is the most crucial component. In these

<sup>31</sup> Ariel Ezrachi, and Maurice. E. Stucke, *VIRTUAL COMPETITION: THE PROMISE AND PERILS OF THE ALGORITHM DRIVEN ECONOMY*, HARVARD UNIVERSITY PRESS (2016).

<sup>32</sup> Emmanuel Combe, *Towards personalized pricing in digital era?*, FOUNDATION POUR L'INNOVATION POLITIQUE (2019) available at: <https://www.fondapol.org/en/study/towards-personalised-pricing-in-the-digital-era/> (last visited 25 Mar., 2022).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Bharti Airtel Ltd v. Reliance Industries Ltd & Reliance Jio Infocomm Ltd.*, Case No. 03, CCI, (2017).

marketplaces, data is equivalent to price. For the express purpose of attracting as many people as possible to their platform in order to collect as much data as possible, all platforms either create network effects or provide steep discounts. The dominance of any player in the market is heavily influenced by data.

### III

#### Importance of Data in Digital Markets

Big Data is often used in unjust ways. It is used to stifle competition in the market. Big Data is used in this way to gain an unfair advantage. One of the first organisations to thoroughly examine concerns related to big data was the Organisation for Economic Co-operation and Development (OECD). Following their discussion, it was determined that Big Data has two key characteristics: large-scale data collections and the use of powerful computation to extract value from the data quickly.<sup>36</sup> The development of technology has enabled businesses to retain enormous amounts of data, use them to their advantage, and improve predictions, allowing for effective market interventions.<sup>37</sup> The gathering and storing of data is just as crucial as its use, as its strategic application can provide businesses an advantage over their rivals.<sup>38</sup> The five Vs—volume, velocity, variety, verifiability, and value—are used to characterise the data features.<sup>39</sup>

The 'Volume' element is the most crucial among them since, as a result of technological development, data processing and storage options have multiplied. Due to the fact that these digital businesses depend on this data and that market supremacy is directly tied to it, the 'Value' of such data is enormous. The 'variety' of data is another crucial factor since it enables businesses to target their advertising and develop and improve their products and services in accordance with consumer demand. Verifiability, which indicates the ability to confirm the accuracy of the data, becomes a crucial aspect in drawing the best conclusions from the huge diversity of data acquired. The next crucial element is 'Velocity.' The speed at which data is gathered and processed once more becomes crucial for getting an advantage in the fiercely competitive digital market.<sup>40</sup> It's not always necessary to use cash as the platform's currency on the Internet. It is

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<sup>36</sup> De Mauro et. al., *A Formal Definition of Big Data based on its Essential Features*, 65 LIB. REV. 122 (2016).

<sup>37</sup> Andrew McAfee and Erik Brynjolfsson, *Big data: e management revolution*, 90 HARVARD BUSINESS REVIEW 60 (2012).

<sup>38</sup> *Id.*

<sup>39</sup> Maurice Stucke & Allen Grunes, *The Important Role of Antitrust in the Era of Big Data*, University of Tennessee Legal Studies Research Paper No. 269 (2015), available at: <https://ssrn.com/abstract=2600051> (last visited 17 Aug., 2021).

<sup>40</sup> *Id.*

information that is obtained through data in various circumstances.<sup>41</sup> We have looked at the importance of data to organisations and the methods used in data collection. A variety of web-based platforms can collect crucial data and information at a minimal assortment cost for storage, analysis, and stockpiling.<sup>42</sup>

Information gathered by search engines, social media platforms, and e-commerce websites is unique data that isn't immediately available.<sup>43</sup> Data is the reason why these digital platform companies are investing so much money in expanding free offerings for the users because it isn't efficiently and quickly accessible.<sup>44</sup> It depends on a variety of factors what effect exclusive access to information through data and data collection has, like 'economies of scale'<sup>45</sup>, increasing the competitive advantage.<sup>46</sup> Economies of scale and networks effects make it challenging for a new player to enter and secure a place in the market, protecting the position of the already established companies.<sup>47</sup> We can see that digital platforms like Facebook collect ongoing data and cycle it in accordance with viewer preferences, so the content changes according to the preferences of the user operating the platform. To gain advantage in the market, a player of the platform market must actually gather and process real-time data and not just the previous past customer data. Because of its large number of repeat users, Google ranks as the top web crawler because it can quickly adapt to the preferences of new users and provide the necessary information quickly.<sup>48</sup> Therefore, a company's potential to significantly dominate the market and have an advantage over rivals depends on how quickly it produces and obtains this personal data.<sup>49</sup>

The economists used the phrase 'BAADD' (too big, anti-competitive, addictive, and damaging to democracy) to highlight how dominating Facebook, Google, Amazon, and Apple are in terms of the amount of data they control.<sup>50</sup> Peter Norvig, head scientist at Google, was quoted as saying, '*We don't have better algorithms than anyone else, we have more data.*' It's commonly mentioned that a corporation needs a strong algorithm in addition to current and relevant data in order to operate an online platform

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<sup>41</sup> Maurice Stucke, *Should We Be Concerned About Data-opolies?* 2 GEORGETOWN LAW TECHNOLOGY REVIEW, 275 (2018).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Supra* note 39.

<sup>45</sup> Udai Mehta and Ujjwal Kumar (Eds.), *COMPETITION AND REGULATION IN INDIA*, CUTS JAIPUR (2019).

<sup>46</sup> *Supra* note 4.

<sup>47</sup> *Supra* note 28.

<sup>48</sup> Kathline Toole, *How Big Data Changes Business Management*. STANFORD BUSINESS (Sep. 20, 2013), available at: <https://www.gsb.stanford.edu/insights/susan-athey-how-big-data-changes-business-management> (last visited 20 Sep., 2021).

<sup>49</sup> Ariel Ezrachi, & Maurice Stucke, *VIRTUAL COMPETITION: THE PROMISE AND PERILS OF THE ALGORITHM-DRIVEN ECONOMY* (2016).

<sup>50</sup> *Supra* note 41.

successfully.<sup>51</sup> The platforms' enormous data holdings make the government's position on entry barriers and other areas of competition more complicated.

## IV

### Is Google competing fairly? An Indian Perspective

Google, like many large companies, has been the subject of scrutiny regarding its business practices and potential antitrust issues.<sup>52</sup> The question of whether or not Google is competing fairly is a complex one that depends on the specific circumstances in question and can be difficult to determine without further information.<sup>53</sup> It is important to note that Google has faced numerous investigations and lawsuits over the years, both in India and abroad, regarding its business practices and potential antitrust violations.<sup>54</sup> Google, one of the largest and most powerful technology companies in the world, has come under scrutiny in recent years regarding its business practices and potential antitrust violations.<sup>55</sup>

One of the main concerns raised about Google's business practice is its dominance in the search engine market.<sup>56</sup> According to data from Statista, Google holds over 90% of the global search engine market share.<sup>57</sup> This dominance has led to concerns that Google may be using its market power to favor its own products and services over those of its competitors.<sup>58</sup> For example, it has been alleged that Google has favored its own shopping comparison service, Google Shopping, over those of its competitors in its search results.

Another concern raised about Google is its control over the online advertising market.<sup>59</sup> Google is a dominant player in the online advertising market, with its Google AdWords

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<sup>51</sup> *Supra* note 4.

<sup>52</sup> Lauren Feiner, *Google's Antitrust mess : Here are all the major cases its facing in the US and EU*, CNBC (Dec. 18, 2020), available at: <https://www.cnbc.com/2020/12/18/google-antitrust-cases-in-us-and-europe-overview.html> (last visited 11 Aug., 2021).

<sup>53</sup> Archis Chowdhary, *Why does Google keep getting fined for Anti – Competitive Practices?* BOOM LIVE (Oct. 26, 2022), available at: <https://www.boomlive.in/explainers/google-anti-competition-cci-monopoly-google-play-pay-upi-apps-payments-19709> (last visited 22 Dec., 2022).

<sup>54</sup> *Id.*

<sup>55</sup> Geoffrey A. Manne et.al., *Google and the limits of Antitrust: The case Against the case Against Google*, 34 HARVARD JOURNAL OF LAW AND PUBLIC POLICY 171 (2012).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> Dina Srinivasan, *Why Google Dominates Advertising Markets*, 24 STANFORD TECHNOLOGY LAW REVIEW 55 (2020).

and Google AdSense platforms accounting for a significant portion of the market share. It has been alleged that Google has used its market power to favor its own advertising products over those of its competitors, making it difficult for other companies to compete in the online advertising space.<sup>60</sup> Google has also been criticized for its collection and use of data. Google collects a significant amount of data from its users through its various products and services, such as search, email, and maps.<sup>61</sup> This data has been used to improve Google's products and services, but it has also been used to target advertising to users. Critics argue that Google's collection and use of data may be unfair to its competitors, as it gives Google an advantage in the market.<sup>62</sup>

In response to these concerns, Google has faced numerous investigations and lawsuits over the years, both in the India and abroad. In India, the Competition Commission of India (CCI) conducted a wide-ranging investigation into Google's business practices, and has pronounced various orders against them imposing heavy fines.<sup>63</sup> Even the European Commission has launched multiple investigations into Google's business practices, and in 2017, it imposed a record-breaking \$2.7 billion fine on the company for promoting its own comparison-shopping service in its search results.<sup>64</sup>

Despite the investigations and lawsuits, Google has maintained that it is competing fairly in the market. The company argues that its dominance in the search engine market is due to the popularity of its products and services, and that it has not used its market power to harm competitors.<sup>65</sup> Google has also stated that it is committed to providing users with the most relevant and useful search results, regardless of the source.<sup>66</sup>

The CCI has pronounced certain orders recently and one is in the pipeline. The discussion on the nature of allegations and stand of CCI is discussed in the succeeding paragraphs.

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<sup>60</sup> *Id.*

<sup>61</sup> *Supra* note 14.

<sup>62</sup> *Id.*

<sup>63</sup> Harichandan Arakali, *India's Google fine spotlights big-tech's dominance in the country's Digital Ecosystem*, INDIA FORBES (OCT. 21, 2022), available at: <https://www.forbesindia.com/article/news/indias-google-fine-spotlights-bigtechs-dominance-in-the-countrys-digital-ecosystem/80723/1> (last visited 30 Dec., 2021).

<sup>64</sup> Foo Yun Chee, *EU fines Google record \$2.7 billion in first antitrust case*, REUTERS (2017), available at: <https://www.reuters.com/article/us-eu-google-antitrust-idUSKBN19I108> (last visited 30 Dec., 2021).

<sup>65</sup> *Supra* note 13.

<sup>66</sup> Griffin Lafleur, *Search Engine Optimisation*, TECHTARGET NETWORK (Apr. 2022), available at: <https://www.techtargget.com/whatis/definition/search-engine-optimization-SEO> (last visited 30 Dec., 2021).

***Mr. Umar Javeed and Others v. Google LLC***<sup>67</sup>

Under Section 19(1)(a) of the Competition Act, 2002, Mr. Umar Javeed, Ms. Sukarma Thapar, and Mr. Aaqib Javeed filed this information against Google LLC and Google India Private Limited, alleging, among other things, that Google had violated Section 4 of the Act by abusing its dominant position in the market for mobile operating systems. The informants reportedly utilise android-based devices. Anyone can use and change the Android mobile operating system because it is open-source. Due to the open-source nature of Android, other manufacturers may be able to alter and create their own forked OSes, commonly known as variations of Android. Under the term Google Mobile Services, Google not only distributes apps but also creates and releases its own software. The nine mobile apps that are part of this bundle include Chrome, Google Search, and the Play Store. Device manufacturers must sign straightforward licence agreements in order to be permitted to use the Android operating system. Manufacturers must agree to the terms of the 'Mobile Application Distribution Agreement' and the 'Android Compatibility Commitment' in order to instal Google Mobile Services and gain access to Google's special APIs.

When these two agreements were contested, it was said that Google was preventing the creation of competitive mobile apps by mixing some of its services—like the Play Store, which is regarded as essential—with others—like Play Music, Google Search, and so on—for which viable alternatives exist. This was done in order to prevent the creation of rival mobile applications. Additionally, it was claimed that by unfairly lowering the incentives for third-party developers to produce their own customised Android Forks, Google hinders market innovation by imposing the ACC constraints. Google's implementation of ACC limits supported this assertion.

There were various key questions discussed in this case: Is requiring device manufacturers to pre-install the complete GMS as part of the MADA in breach of Sections 4(2)(a)(i) and 4(2)(d) of the Act? By limiting the introduction of rival search apps, has Google preserved their monopoly on online search in accordance with Section 4(2)(c) of the Act? Does Google's defence of its hold on general online search through its control of the Play Store constitute a violation of Section 4(2)(e) of the Act? Is it conceivable that by linking the Google Chrome software to the Play Store, Google violated Section 4(2)(e) of the Act by abusing its market dominance? Whether Google's illegal integration of the Play Store and the YouTube app violated Section 4(2)(e) of the Act.

Google presented justifications and supporting data regarding Apple's competitive difficulties throughout the study. The CCI assessed the variations in the two companies' business structures in order to more accurately gauge the level of competition between Apple's iOS ecosystem and Google's Android ecosystem. The incentives that are crucial for making business decisions are impacted by these variances. An ecosystem of smart

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<sup>67</sup> 39/2018.

devices that is vertically integrated provides the majority of Apple's revenue. The core of this ecosystem is the sale of high-end smart devices combined with cutting-edge software. Apple is substantially more capable of selling online advertising services than Google, whose main objective is to attract more people to its platforms so they will utilise internet search, Google's revenue-generating business.

The CCI contends that markets should be left to compete on the basis of merit, and that it is the duty of dominant businesses (in this case, Google) to make sure that their actions do not impede this competition. Previous agreements allowed Google to guarantee that its search services would still be accessible on mobile devices. As a result, Google's advertising revenue was able to increase. Additionally, it gave Google the opportunity to increase its investment in and development of its own services at the expense of its rivals. Therefore, Google's main motivation for enacting a lot of restrictions was to uphold and reinforce its dominant position.

### *Judgment*

Therefore, in accordance with Section 27 of the Act, the Competition Commission of India (CCI) assessed a fine of \$1,337.76 Crores and issued a cease-and-desist order for its anticompetitive activities. Some of the recommendations from the CCI include the following<sup>68</sup>:

1. OEMs should have freedom to choose where pre-installed applications are placed on their devices and should not be restricted from pre-installing Google's proprietary software on smart devices. They should also not be required to pre-install a significant number of applications.
2. OEMs do not need to pre-install Google search services, Chrome, YouTube, Google Maps, Gmail, or any other Google-developed software in order to obtain Play Store licencing (including Google Play Services). Every product and service offered by Google is covered by this clause.
3. In order to disadvantage OEMs, app developers, and current or potential rivals, Google shouldn't restrict access to its Play Services APIs.
4. Neither is Google allowed to enter into any form of contract with OEMs to guarantee that their products only have access to their search services, nor is it allowed to offer any monetary or other incentives to OEMs.
5. Google will not allocate anti-fragmentation responsibilities to original equipment makers, as is already the case under AFA/ACC (OEMs).
6. Google will not compel OEMs to promote smart devices based on forked versions of the Android operating system or offer them financial incentives.

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<sup>68</sup> Diksha Munjal, *Explained: CCI's 1300 crore fine on Google and how that will change Android Smartphones*, THE HINDU (Oct. 23, 2022) available at: <https://www.thehindu.com/sci-tech/technology/explained-ccis-1300-crore-fine-on-google-and-how-that-will-change-android-smartphones/article66048979.ece> (last visited 11 Aug., 2021).



7. Google won't restrict customers' ability to uninstall pre-installed applications from their devices.'
8. Customers should be able to choose Google during device setup as their preferred search engine. This ought to be accessible at all points where a search is started. Developers of app stores will be able to offer their apps via the Play Store platform thanks to Google. App developers can share their work without being bound by Google's limitations thanks to side-loading. Though they are the only ones covered, they are all approaches.

***XYZ (Confidential) v. Alphabet Inc.***<sup>69</sup>

The Competition Commission of India fined Google Rs 936 in its second decision for abusing its dominant position with regard to its Play Store policy. The company has also been ordered by the regulator to stop all unfair business practices and take a number of steps to rectify the anti-competitive issues within a specified time frame. In addition to the fine, CCI argued that Google should not prohibit app developers from using any third-party billing or payment processing services. The fine is equal to 7% of the company's average relevant annual turnover.

Additionally, the internet giant has been urged not to impose any anti-steering rules on app developers and not to obstruct their ability to communicate with consumers in any way to advertise their apps and services. According to the release, Google shouldn't impose any limitations on how end users can access and utilise the features and services provided by app developers within their apps. According to CCI, the business should have a clear and open policy about the data that is gathered on its platform, how the platform uses such data, and whether or not such data is actually shared with app developers or other entities, including connected companies.

Among other instructions, the regulator has advised Google to refrain from using the transactional and consumer data of apps developed and acquired through GPBS to further its competitive advantage. According to the regulator, Google must make sure that app developers are fully informed about the services offered and the associated costs.

In both these cases Google was fined 1337.6 crore and 936 crore by the Competition Commission of India (CCI) for abusing its dominant market position with the Android operating system and Play Store. The third case is on going and is directed at the Android TV operating system from Google and the companies it collaborates with.<sup>70</sup>

In conclusion, the question of whether or not Google is competing fairly is a complex one that depends on the specific circumstances in question. Google's dominance in the search engine and online advertising markets, as well as its collection and use of data,

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<sup>69</sup> 07 of 2020 with 14 of 2021 with 35 of 2021.

<sup>70</sup> *Kshitiz Arya v. Google LLC*, 2021 S.C.C. OnLine C.C.I. 33.

have raised concerns about the company's business practices and potential antitrust violations. However, Google has maintained that it is competing fairly in the market and that its dominance is due to the popularity of its products and services. Despite multiple investigations and lawsuits, it is important to note that no conclusive evidence has been found that Google has violated any antitrust laws.

## V

### **Conclusion**

The introduction of digitalization has altered the nature of the modern economy. The nature of the market is quite dynamic. In such a volatile market, technological innovation is the only constant. Such innovations have greatly benefited humanity. Numerous civilizations have benefited significantly from the ever-increasing use of the internet. Geographical distance is no longer a hindrance to the free exchange of knowledge. We have connections with people who live anywhere in the world. Services and goods are now delivered considerably more quickly and easily. In the digital age, a wide range of information is readily available to us. But these technological advancements have also given us a whole new set of problems to deal with. Large companies' presence in the digital market necessitates a new set of controls to prevent monopolistic effects on competition. These businesses build brand-new types of barriers to entry. Additionally, these businesses engage in new types of predatory pricing, cartelization, and collusion to influence consumer preferences in the market due to the dynamic nature of the market. Additionally, because of privacy invasion, incorrect information exposure, and exposure to harmful content, users of various social media platforms are frequently exposed to specific risks. These risks can worsen users' mental health or radicalise them. Thus, although providing a wide choice of options to customers, these companies regularly take acts that could be detrimental to social fairness and consumer welfare. Controlling the digital marketplaces has become more difficult for regulatory and competition organisations worldwide. Developing nations like India also face more difficulties since they lack the knowledge and resources necessary to conduct in-depth investigation and engage in jurisprudential debate on a variety of mergers-related issues. This is a result of old conceptions of competition, competition, and regulatory organisations being opposed by huge technical firms to novel business models.

To encourage competition in the digital markets, countries all over the world have continually changed their legal rules and mechanisms. Competition experts have also studied how big technical enterprises alter their business plans. While doing this, they are additionally required to evaluate their abilities. Because of the market's volatility,

which raises concerns about data ownership and network effects, the competition authorities must develop stronger analytical skills and take assertive action.

To address the new types of difficulties brought by digital supremacy, CCI must have enough power. New ideas have been offered by the Competition Amendment Bill 2022 to address issues raised by platform dominance. The process of enacting the bill as an Act is still ongoing. This is unquestionably a good move that might have a big impact on controlling the expanding number of platforms in the digital market.

Ex-ante evaluation of abuse of dominance is susceptible to deficiencies in present competition law, as was already mentioned in the study above. In order to strike an appropriate balance between the benefits that platforms provide and the externalities they cause, it is crucial to look into regulatory options within the constraints of the existing legal system. Given the projected regulatory compliance load on the platforms as a result of the implementation of data protection and sharing regulations, it would be good to increase the existing expertise without introducing more overlaps.

In conclusion, the digital market poses a variety of difficulties for the enforcement of competition laws. These include things like defining the market, identifying dominating market positions, and evaluating the likelihood of anti-competitive behaviour. Additionally, it may be challenging for competition authorities to keep up with advancements and successfully enforce the law due to the rapid rate of technical change and the worldwide character of digital markets. To encourage fair competition and safeguard consumer welfare, it is crucial for competition authorities to adapt and continue enforcing the law in the digital market despite these difficulties.