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ROLE OF COMPETITION LAW IN DATA PRIVACY

The online platforms are present in every sector of the economy, coining the term 'digital economy'. Online platforms like Google, Meta and other social media applications provide services without charging any monetary payments. However, these companies get the funds from ad revenues and "companies get huge sums from social media and other service providers for their user data"[1]. As said by Australian Competition & Consumer Commission, the user data collected by data-driven platforms is used to improve and develop products and services[2] and make decisions regarding advertisements. The compilation of user data lets the online platforms to recommend targeted advertising opportunities to their advertisers, which further explains the high ad revenues earned by such platforms. The latest financials show that Meta's ad revenues for the year 2023 stands at USD 131 billion (97% of total revenue USD 134 billion), while Google's ad revenues 2023 was USD 237 billion (77% of total revenue of USD 305 billion).

The traditional understanding of competition law is that it regulates the competition in the market and prohibits unfair and restrictive trade practices. While, the privacy laws ensure that information of data subjects is kept confidential to authorised parties and there is no free flow of personal information, especially without express consent of data subject. The digitalisation of trade and commerce has blurred this traditional thought and there is potential overlap between the two regulations.[3] The subject matter of solely invasion of users 'privacy will stay under the ambit of data protection authorities. The competition law will come into play only when mishandling of data has a potential to negatively affect the market competition. The European Commission (EC) in Google Android case of 2018 observed that "*collection of the user data by Google from smart mobile devices using Android OS helped Google to strength its search and search advertisement business*"[4]. The Competition

[1] Umar Javeed, "*Data and Competition Law: Introducing data as non-monetary consideration and competition concerns in data-driven online platforms*" (2021). https://dx.doi.org/10.2139/ssrn.3788178 .

[2] Australian Competition & Consumer Commission, "*Digital Platforms Inquiry*" (2019). Available at: <https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf>.

[3] Arletta Gorecka, "*Competition law and privacy: extensive data acquisition as the 'eye' of the problem*". Network Law Review (2023). Available at: <https://www.networklawreview.org/phd-privacy/>.

[4] EC, Google Android (2018).

Commission of India (CCI) in Matrimony.com Ltd v. Google[5] observed that Google was using user data to target advertisements and improve its search algorithms. This shows the value of user data to online platforms and how it is the very basis of working of such companies. This user data is non-monetary consideration paid by consumers against the services availed. The same has been opined by EC in Google AdWords case 2017. The EC observed that "*providing data or access to data to Google is monetization of services*".

COMPETITION CONCERNS IN ONLINE PLATFORMS

1. ***High Concentration leading to high entry barriers*** - Online platforms operate on winner-takes-most market model because they are attributed by network effects, feedback loop, high switching costs and extreme economies of scale. Such model allows the market power to be highly concentrated posing as - i) competitive advantage to winner in form of cost advantage from large database; and ii) entry barrier for new players. The EC noted in Google AdWords[6] and Google Android cases that "*High switching costs and network effects drives barriers to entry*". The Competition Law Review Committee in is report stated that "*a company with a large user base is able to collect more data to improve the quality of its service and thereby acquire new users-known as the user 'feedback loop'.*"[7] Hence, accumulation of user data gives competitive advantage.
2. ***Denial of market access to competitors*** – Dominant players may set unfair terms to deny market access to other players, like put in contractual clauses regarding data portability and lock in user data. For instance, startup app Six4Three had its business impeded due to Facebook's unfair practice in access to data. The UK Parliament stated in the report that "*Facebook was willing to override its users privacy settings in order to transfer data to some app developers, to charge high prices in advertising to some developers, for the exchange of that data, and to starved some developers - such as Six4three-of that data, thereby causing them to lose their business*". Google AdWords was found liable by both EC and Federal Trade Commission[8] (FTC) for contractually restricting data portability across competing platforms, thereby increasing switching cost. As per both aforementioned competition authorities, existing advertisers of AdWords were discouraged from switching their campaigns to other platforms because of said limitations.

[5] Matrimony Limited v. Google LLC & Anr (CCI 2012).
[6] EC, Google Search (Shopping) (Case No. 39740, 2018).
[7] Report of the Competition Law Review Committee (2019). Ministry of Corporate Affairs, GOI. Available at: <https://www.ies.gov.in/pdfs/Report-Competition-CLRC.pdf>.
[8] Statement of the Federal Trade Commission, *In the Matter of Google Inc.*, FTC File Number 111-0163 (2013).

In light of above discussion, enforcing regulations on data-driven platforms can serve as the cornerstone for data-driven innovations, increase the advantages of data use and reduce its drawbacks. Data interoperability and data portability between platforms are crucial in easing entry and expansion of new companies while mitigating their competitive disadvantage against existing players. Further, network effects, feedback loop and switching costs should be taken into consideration when adjudging cases of dominance of online platforms.

CONCLUSION

The compilation of user data with a few players forms a concentrated market. The winner-takes-all model of the data driven market makes it easy for dominant players to gain unfair advantage. The example of Google search engine is very apt in this aspect. Google is dominating the online industry with its multiple services and has used this dominance to set unfair terms. The scope for new player to enter the market and survive is negligible. Such market environment limits innovation and directly impacts users. The vital factors to be considered while determining dominance of data-driven undertaking are switching costs and feedback loop. Switching cost refers to the expenses that consumers will have to incur if they switch platforms. Data portability is a crucial sub-factor in this respect. Like in Google AdWords case wherein it restricted data portability of advertisers if they decided to another platform, it increased the platform switching cost for advertisers thereby denying market access to competitors. Feedback loop is collection of user feedback to improve and develop new products and services further enabling these online incumbents to not only retain the existing customer base but also attract new customers. Unregulated data can have a negative impact on competition in the relevant online platform industry in addition to posing privacy risks. The role of competition law and the competition authorities is to monitor the dominant online platforms to ensure there is no abuse of market position as these dominant platforms have limited incentive to allow data portability and interoperability.