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COMPETITION LAW IN THE AGE OF DATA: COMPETITION COMMISSION OF INDIA'S APPROACH TO NON-PRICE FACTORS

~ *Simran P Kanchagar*

I. INTRODUCTION

Digital platforms have changed market dynamics, leading to a finding that the traditional way to enforce price-based competition laws do not work anymore. Regulatory authorities worldwide have understood that in digital markets, market power is no longer purely about price. Companies leverage aspects of data power, consumer preference, platform architecture, etc., for competitive prowess in the digital marketplace. The CCI has hesitated to enforce competition based on design-based abuses in its evolving world, as seen in the example of *Matrimony.com v. Google LLC and Ors*¹. However, in recognition of the evolving landscape, the Competition Commission (CCI) has begun to include non-price elements in its regulatory space. These changes to control over data, aspects of user preference, and platform structure are best evidenced by matters such as the privacy policy update, Play Store pricing rules, and exclusions against real-money gambling applications, and encompass non-price issues such as exclusionary techniques, abusive exploitation of data, and consumer locking features.

These evolving mechanisms are reflective of the emerging world views regarding market power in the digital world². Emerging theoretical discussions, like those presented in Angela Li's "A Reconciliation of Power in Competition Law With its Application in the Digital Landscape," provide helpful insights into how competition law could include wider meanings of power - distinguishing between power over resources and the use of that power by

¹ *Matrimony.com Ltd. v. Google LLC & Ors.*, Case No. 07 & 30 of 2012, Competition Commission of India (Feb. 8, 2018).

² CCI Press Release No. 56/2022-23 (Oct. 25, 2022) — Google Play Store billing policy concerns (GPBS).

combining resources through technological innovations or control of data³. These notions are spreading in acceptance globally as understanding the CCI's jurisprudence is developing in digital markets.

II. CONCEPTUAL REORIENTATION

To effectively confront the complexities of digital markets, competition law is undergoing a significant theoretical shift away from its traditional focus on production and price. Regulatory bodies are increasingly recognizing that market power often takes the form of non-price mechanisms, such as data ownership, user experiences, algorithms, and technology systems. Moreover, digital platforms rarely exert power through observable prices. Under this broadened meaning, market power can often be inferred from its effects on the market and its actual use through exploitative or exclusionary practices, including steering user conduct, restricting access to an important digital gateway, or using data asymmetries.

A. BEYOND PRICE POWER

Historically, competition law theories have conceptualized harm as a movement in price of products and services. However, digital platforms operate in multi-sided markets, wherein services offered at a zero-price, camouflage varied forms of market dominance, based in data collection, design of standards, and lock-in of users, etc. In the article *A Reconciliation of Power in Competition Law with its Application in the Digital Realm*, Liang's two-faced approach to power, i.e., capacity and exercise, provide regulatory authorities a means of identifying abuses in dimensions of economic harm, behavioural exploitation, and consent architecture⁴.

The aforementioned approaches create unique challenges. By implementing interfaces, a platform can assist users toward results preferred by the platform, but default settings and pre-installed applications have already addressed competitors' access to market opportunities through a digital platform. The non-price harms include restricted autonomy for consumers, limited innovation in technology, and barriers for entrants to the market.

³ Liang Li, *A Reconciliation of Power in Competition Law with Its Application in the Digital Realm*, 21 J. Competition L. & Econ. (2025).

⁴ Moritz Hardt et al., "Performative Power," arXiv (2022)

For example, a platform's control over default settings for the search engine means there is limited choice for the user and the default will push the user towards a search engine the platform prefers, therefore harming competition in the search engine market.

Standard competition law definitions of market power are about the ability to restrict production/supply or raise prices above competitive levels. However, in most digital settings, resources and power are divided. Subtle but arguably more insidious forms of power include: gathering and leveraging consumer data; consumer steering within its ecosystem; controlling default settings; sharing of data with group companies (i.e., sharing data across apps like WhatsApp, Facebook and Instagram); and designing consumer interfaces which shape consumer preferences without a direct change in nominal cost. As mentioned above, firms' power/dominance can manifest in a number of forms and, consequently, power is exercised in at least four different ways in the digital arena. These variations of power are:

1. **Data power:** - access to consumer data. To dominate the digital markets requires the firm to have the data that creates the value. If data is worth so much to these digital firms, then whoever controls the data is going to control the markets.
2. **Technological power:** - Technological power of firms refers to the firms that manage key technical infrastructures such as user interfaces, app stores, operating systems, services, etc.
3. **Behavioural power:** - consent frameworks, consumer sticking, steering consumers between applications/features within the single ecosystem etc.
4. **Ecosystem powers:** - Platforms relying on network effects and vertical consolidations in complementary are dominant by virtue of both.

Identifying these forms of influence using standard antitrust methods is more difficult since they function independently of conventional economic pricing models.

B. BRIDGING THE GAP BETWEEN POWER AND CONDUCT: AN INNOVATIVE PERSPECTIVE ON COMPETITIVE HARM

The conduct of digital markets can be assessed in multiple ways because of the conceptual distinction between capacity for power and legal definitions of power.

For instance, in *People Interactive v. Google*⁵ (*People Interactive India Pvt. Ltd. v. Alphabet Inc. & Ors.*, Case Nos. 37 of 2022, 17 & 27 of 2023, Competition Commission of India), Google's power can be framed in terms of capacity for power, requiring the use of its billing system. Google exercises that power if it requires developers to use the system, which restricts choice. Thus, that ability to exercise power necessitates scrutiny when animating the risk of harm within digital markets. In a similar sense, the WhatsApp terms of service regarding user agreement to a data sharing policy indicates how consent design can be used as an instrumentality for power and exploitative harm. In that instance, the consumer does not "pay" for anything⁶. Instead, the consumer "pays" in terms of autonomy and data, which are important competitive attributes.

Incorporating this dual conception of power influencing regulator decision-making regulators (e.g., CCI) will enable regulators to identify non-price harm and to presumptively engage in exclusion or exploitative harm that otherwise might remain unchecked under existing frameworks.

C. PRACTICAL EFFECTS OF MARKET EVALUATION AND REGULATION

Digital market power is huge and regulatory authorities can use it to set new competition limits beyond pricing, dominance using more appropriate methods that consider digital dependence and consumer lock-in, and apply remedies that cover both the structural and behavioural foundations of market power like demanding interoperability, prohibiting customer steering practices, or stopping data abuse practices.

III. MARKET DEFINITION IN ZERO-PRICED ENVIRONMENTS

It is often difficult to define a meaningful market in the case of free services. Not only that, but power is also not always associated with money flows, hence, even in non-financial transactions, free services (like social networks and messaging apps) can be considered as arenas for competition analysis. This is because in the zero-priced environments, the service

⁵ *People Interactive India Pvt. Ltd. v. Alphabet Inc. & Ors.*, Case Nos. 37 of 2022, 17 of 2023 & 27 of 2023, Competition Comm'n of India (Mar. 15, 2024).

⁶ "The Privacy-Antitrust Paradox? Analysing the CCI's Penalty Order against Meta and WhatsApp" (Jan. 20, 2025).

value is determined not by the user payment but rather by the user's data and attention which the platform converts into money.

Consent Design: Abuse of Dominance

The CCI's judgment in the WhatsApp case asserted that consent by electronic means is an expensive addition when the only alternative for the consumer is to give consent to one app to remain part of the ecosystem, the complete freedom of the consumer is a fantasy.

Gatekeeping and API Access

Control over technology interfaces, such as app stores⁷ and APIs, acts as a structural gate that can either facilitate or restrain the power of the ecosystem in the market by applying access limitations, choosing who can be included according to their own terms, or setting defaults that benefit the platform.

IV. THE RELATIONSHIP BETWEEN ECONOMIC AND NON-ECONOMIC POWER

Platform service providers may utilise arbitrary policies and data-driven design decisions to limit exposure and undermine consumer trust, causing losses beyond pricing impacts, including privacy, ethics, and data accessibility.

In *Winzo Games v. Google*, the lack of clarity in app-store regulations hindered competitors' access and eroded consumer confidence, highlighting the intersection between financial and ethical power dynamics.

V. POLICIES AND JURISPRUDENTIAL EVOLUTION

Multifaced dominance test : the future of law should encompass other dimensions of dominance including data control, technical gatekeeping and behavioural impact, in addition to market shares and pricing autonomy.

⁷ "India has ruled that Google's Play Store billing policy is anti-competitive" (summary of CCI actions & fines; Mar. 31, 2025).

Empirical evaluations : the CCI's 2020 E-Commerce⁸ research has uncovered ecosystem interdependence, information asymmetries , and consent mismatch as causes of competitive damages⁹ .

Ex ante commitments : Ex ante obligations on symmetrically significant platforms like interoperability rules or limits on exploitative data practices could tackle the potential for dominance before it becomes actionable misuse .

VI. CONCLUSION

The CCI has taken a more comprehensive regulatory approach that takes into account non price elements including storage of data, platform governance, consent procedures and ecosystem accessibility in order to meet the changing dynamics of market power in digital markets, England with Global trends such as EU's digital market act and US antitrust actions¹⁰. The recent CCI ruling in cases such as WhatsApp privacy policy¹¹, People Interactive V. Google¹², and Winzo Games V. Google¹³ reflects a shift towards proactive comprehensive examination of dominance. India's 2020 E-Commerce Market Study and 2024 Digital Competition draw Committee report¹⁴ recommended a tailored Digital Competition Act with stronger dominance criteria, ex ante obligations for keep platforms and enhanced technical enforcement tools¹⁵.

⁸ Competition Commission of India, Market Study on E-Commerce in India (Key Findings & Observations, Jan. 8, 2020).

⁹ “Analysing CCI’s Order on WhatsApp’s 2021 Privacy Policy,” Wolters Kluwer Competition Blog (Jan. 6, 2025)

¹⁰ Reuters, “U.S. judge orders Google to open up app store to competition” (Oct. 7, 2024) (U.S. litigation context / Epic v. Google developments).

¹¹ Updated Privacy Policy of WhatsApp, Suo Moto Case No. 1 of 2021, Competition Commission of India (Mar. 24, 2021).

¹² People Interactive (India) Pvt. Ltd. v. Alphabet Inc. & Ors., Case Nos. 37 of 2022, 17 & 27 of 2023, Competition Commission of India (2023).

¹³ WinZO Games Pvt. Ltd. v. Google LLC, Case No. 28 of 2022, Competition Commission of India (2022).

¹⁴ Committee on Digital Competition Law (CDCL), Report of the Committee on Digital Competition Law (Mar. 12, 2024) (incl. draft Digital Competition Bill), PRS/Official release.

¹⁵ Times of India (news): “WinZO disputes Google’s CCI proposal on Play Store rules” (reporting on WinZO-Google comments / timelines—Aug. 2025 reporting but useful for Play Store rule context).