

Article

Digital Platforms, Competition Law and Consumer Protection in the Tech Economy

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Abstract: Digital economies backed by technological advancements have led to digital markets, newer business models and products. Digital markets are integrating into global economies since the pandemic, replacing the traditional markets. This innovative and effective transformation is challenging as it entails risks for anti-competitive practices harming the economy and the consumers ultimately. Governments and competition law authorities are not prepared to deal with these challenges for lack of understanding the digital markets, their functional dynamics and the inefficacy of existing competition laws. Competition authorities are tasked with identifying the possible anti-competitive risks associated with digital markets and find a balance between mitigating the harmful effects of the anticompetitive conducts and fostering innovation through newer products and services offered by these markets. Predicting the evolution of these markets is also a challenge for the authorities. Anti-competitive practices through digital platforms pose concerns for consumers, competitors, governments and society at large. This paper explores the unique characteristics of digital markets and their potential challenges for competition law authorities tasked to detect and curb anticompetitive practices. Global cooperation and interdisciplinary approach is necessary to tackle the problem and foster fair competition in digital markets, to safeguard consumers interest while promoting innovative business practices.

Keywords: digital platforms; competition law; consumer protection; tech economy; digital markets

1. Introduction

Technological innovations have significantly impacted the Indian economy transforming traditional economy to digital economy. Digitalization has essentially changed the way consumers interact with each other. Newer business models have emerged and business strategies have changed significantly. India is third largest digitalized country in the world, after the US and China with the second largest global network of internet users (around 800 million users as of 2023). The business dynamics have changed as digital markets function through digital platforms. This has affected competition practices also. Digital companies have led to the growth of digital markets in both national and global economies in sectors like health care, finance and education.

Economic drivers of digital markets lead to few big players and market leaders referred to as big tech companies. Digital markets are characterized by increasing return to economies. The increasing return result not just from traditional scale and scope effect but also from learning and networking effects. Due to these increasing returns to size, digital markets can tip quickly to winner take all monopolistic outcomes. Traditional markets, contrarily, have diminishing returns to size, leading to strong competition among multiple players. Networking effects enable digital markets to unlock these benefits in other markets. Less number of players in digital markets and less competition make these markets prone to significant anti-competitive behavior.

Digital platforms of ecommerce have introduced novel business models and services (United Nations Conference on Trade and Development 2024). This revolution involves trials and risks as global tech companies having market shares and market power due to concentration of markets. Despite legal and economic frameworks to assess abuse of dominance, it's challenging to address policy concerns of digital markets. The problems associated with anticompetitive effects of digital markets can't be solved only by competition tools, and a comprehensive approach involving alternative competition tools like merger controls and advocacy is required. Digital platforms, e.g., Amazon are important in today's economy as they offer new products to the consumers. However, they enable the entry of apart from new entrant, nonprofessional operators. By enabling matching of different suppliers with users, they enable new uses of the existing resources (Strowel and

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Vergote 2017). The e-commerce sector developed in India since mid-2014 when e-tailers started heavy discounts (Gupta 2020).

Proposed Digital India Act¹ shall be India's newest legal framework for regulating the online platforms and digital data protection policies. It will replace the existing Information Technology Act (IT Act) of 2000. Regulating digital platforms with responsibility is the need of the hour. Dynamics of technology are not simple to be comprehended. The only solution is a balanced approach. The new future of humans shall be technology centric.

2. Unique characteristics of digital markets

Competition in digital markets is the focal concern point for competition law authorities due to their unique characteristics discussed below.

Size

Digital Markets are constantly growing in size. It is estimated that almost 7 out of 10 largest companies in the world provide digital products. Contrarily, growth of traditional markets become stagnant after reaching a certain level.

Multi dimension markets

Digital market are multi-sided facilitating interactions between two or more interdependent groups of users. A multi sided market is one in which a firm acts as a platform and sells different products to different groups of consumers² and demands from one group of consumers depends on other group of consumers. The different independent groups depend on each other to derive value from the transactions. For example, in a ride-sharing platform, drivers and passengers are the two main user groups, both of which benefit from the platform's existence.

As more users join, the platform increases value and this phenomenon is known as network effects. Network effects symbolize the gains that a product consumer enjoy when more consumers use the product. When increase in one user group leads to increase in another user group, the effect is known as positive network effect. It can be illustrated from social networking sites. As more users create accounts on a particular social networking site, benefit is felt by the users of such a site. Network effect can happen in one side of a platform or between different sides of the platform, known as cross platform network effects. Network effects enable a firm to achieve the monopoly.

Subsidized pricing

Digital platforms offer products at subsidized prices sometimes called as zero price. It's done by utilizing the revenue from other side of the market, for example using advertising or data sales or by providing paid premium offerings also called as freemium business model.³

Economies of scale and scope

Digital markets have high fixed costs and often low or zero variable costs. It enables firms to scale up their operations and expand geographic coverage. They use their assets in one market to enter into another market.

Reliance on Data

Digital transactions utilize consumer data. This data is later used by businesses to analyze the likes and dislikes of consumers and accordingly plan their market strategies.

3. Challenges of Digital Markets & Competition Laws

Platform centric digital markets offer novelty, efficiency, and economic growth. However, they also present unique challenges for competition policy and regulation. Digital markets work by misusing the varied interest of the different groups of users. These platform markets bring sellers and users close, reducing the transaction costs. These platforms sell the data of the consumers to the companies which then use the predictive analysis and strategize their business. They are able to come up with strategies according to targeted consumers. Digitalization has many pro-competitive benefits like market contestability, and fair practices that inspire innovation, it however poses some serious concerns as to protection of consumer interests and existence of healthy competition. Data can be misused by platforms to manipulate the market and practice anticompetitive business practices. The traditional laws do not apply when defining terms like ownership of data shared through digital platforms. The platform economy has an inherent feature that businesses grow big and dominant eventually. The unique features of platform economy allow businesses to create an ecosystem resulting in power asymmetry. Business models raise key concerns like exploitative business practices, unequal bargaining power, and exclusionary behaviors of platforms. It is challenging for legislators, think tanks and competition law authorities to guarantee fair competition while minimizing distortions in digital markets. Earlier when the technological interventions were at infancy, the regulators were less stringent. They rather came up with pro-technology policies that enabled these markets to grow. The existing competition law regimes are insufficient to tackle the challenges of the digital markets. A new governance framework is, needed to address potential anti-competitive harm in the digital markets.

Various countries have proposed to reform the competition law regulatory framework through new *ex ante* regulations to complement *ex post* efforts in digital markets. Besides strengthening competition laws, regulatory changes, overhauling legislative measures are proposed. Most countries employ *ex post* enforcement laws to deal with anti-competitive behavior. Anticompetitive conduct in the digital markets and their consequent effect in the market appeared due to increasing *disenchantment* with traditional

¹ Proposed Digital India Act, 2023. Available online: https://www.meity.gov.in/writereaddata/files/DIA_Presentation%2009.03.2023%20Final.pdf (accessed on 12 December 2024)

² Available online: www.oecd.org/daf/competition/abuse-of-dominance-in-digital-markets-2020.pdf (accessed on 12 December 2024)

³ *ibid*

competition law. Investigations were slow and had limited scope, with weak remedies provided. Competition authorities thus faced problem in creating an overarching framework for digital markets. Ensuring fair competition in the digital markets is difficult due to traditional classic antitrust conduct like tying in, and restrictions to market access and modern data driven platform-based models of businesses. Competition laws act as guardians of consumers interests for their welfare. The competition law investigations now focus on proof that a certain infringement has anticompetitive effects and why and how such infringement contributes to consumer welfare. The traditional principles of competition including definition of market and assessment of dominance are challenged by the digital markets. Anti-competitive conduct in the digital market, affect not only that particular ecosystem but also other ecosystems. Hence, regulatory bodies should seek guidance from case law decisions of different jurisdictions and devise rules to deal with case-to-case basis. Competition authorities can go for an ex-ante framework approach and pre-emptive measures to address anti-competitive behavior or adopt ex post framework taking actions on case-to-case basis (Yasmin et al. 2024). Competition authorities of developing countries are facing more challenges due to limited resources. For example, abuse of dominance merely price changes do not stand as exclusive tool to define markets and other factors like user data and network effects should be considered.

Consumers of digital world, confront new challenges that require a nuanced approach, and a robust framework to protect the interest of the consumers. Protection of consumer interest is not just a legal but ethical concern. The common issues of consumer interest like privacy and redressal measures have been revamped due to the dynamic nature of online environment. The transition to e-commerce markets from brick-and-mortar markets, and new forms of business models like subscription-based models, and reliance on personal data is posing new risks to consumers (Tyagi 2024). To protect the consumers interests in digital age, the redressal mechanisms must also evolve as technology is ever evolving.

Benefits accruing to the consumers

Following are some benefits to consumers due to the digitalization of businesses:

- New product and services are available on the same platform due to convergence of both national and international markets. Variety of products, with varying prices are available to the consumers today. Innovative techniques of assisting the consumer to make choices are available like digital assistant. Through digital assistant, consumers are guided to purchase products that could best serve their purpose.
- Consumers also benefit from reduced cost of transaction and cheap, and at times free products (Leary 2005).
- Consumers are offered personalized good. Firms functioning through the digital market make use of the data collected of the consumers and offer tailored goods targeting the specific needs of an individual consumers.
- Online ecommerce offers convenience, and customization to the consumers.
- AI powered digital assistants can overcome the problem of behavioral biases and help consumers in making right decision as to purchases.

Challenges to consumers

Digitalization of business, while has offered better service and new goods and services, is not risks. Concerns of privacy, transparency, security, discrimination, data ownership and safety of products have surmounted.

Transparency

For consumers trust, transactions undertaken by companies in the digital markets should be transparent. Companies must submit all legal and other disclosures timely. Investigations as to infringement of consumer interest indicate lack of transparency and non-disclosures on part of companies as the major issues. Consumers are sceptic as to how their data is being used. Data may contain personal information of consumers like date of birth, number of family members, and home address. Data can also relate to physiological issue like health-related matters, allergies, and sexual activities. Consumer shares such information under confidence that it shall be used only for purposes as agreed. It is important that a confirmation regarding the same must be given to the consumers. Transparency and disclosure requirement can be very challenging in digital platforms as consumers have limited understanding of the complexity of algorithms and technologies which are mostly AI based. Consumers generally have no understanding as to “who is behind the scene”. Because consumers have limited understanding of the complexities of how technology works and how data is shared, it may result into lack of clarity for data ownership, and interoperability.

Discrimination

Consumers data enables businesses for consumer profiling to provide them preferential goods and services, but it can also discriminate consumers regarding pricing, and offers presented. Personalization can offer economic efficiency to consumers but may also lead to unfair commercial practices.⁴ Personalization is unfair if it targets vulnerable consumers and AI has further exaggerated these discrimination issues. If AI is using inherently biased data, it will perpetuate the same whenever it is used, giving false and biased data, leading to false decisions and risking consumer autonomy. Excessive reliance on AI for making decisions can cause humans stop functioning as humans.

Security and privacy

Digital platforms work on data collected from consumers raising privacy and security issues. It’s uncertain whether companies that thrive on consumer data, comply with ethical standards of concerning using of consumer data and remedies available to consumers in case of data breaches.

⁴ Personalised pricing for communications, OFCOM, Available online: <https://www.ofcom.org.uk/siteassets/resources/documents/phones-telecoms-and-internet/information-for-industry/personalised-pricing-for-communications/personalised-pricing-discussion.pdf?v=325122> (accessed on 12 December 2024)

Product safety

Products can be controlled remotely raising safety concerns as control is in the hands of other persons. This remote-control ability makes the products unsafe. Possibility of a software patch, and bug in data or the device being compromised can risk the user.

Accountability

Digital ecosystems and new business models raise procedural concerns regarding accountable companies and persons. It's especially important for multinational companies that have their branches or zonal offices in different countries, while head office in their mother country. In case of IoT devices, accountability and fixing liability may be more complex. Consumers may find it difficult to determine which segment of the digital ecosystem, fault occurred. Further sellers can avoid responsibility and liability in countries that have weak consumer protection laws.

Interoperability

Interoperability ensures that systems and devices can work together. Restricting interoperability may lead to innovation. It also helps in safeguarding privacy. Thus, interoperability is good. It benefits by avoiding "lock-in" and help consumer make choice, thus facilitating competition (Pandey and Sharma 2025).

Ownership

When consumers buy an AI based technology, they actually buy the whole device, i.e., the hardware. They technically are the owners of that device. However, when purchasing the hardware, the device comes along with a license. License terms limit the conditions of repair and use of the device. This challenges traditional assumptions regarding ownership.

After sale support

IoT devices require software support and internet connection. Withdrawal of software support shall imply that the software shall not work as intended. Device can become vulnerable to security breaches, leading to privacy and safety issues.

4. Challenges Faced by Governments

Governments must assess whether the existing consumer protection legislations are effective in the new digitally transformed era. Any policy related to consumers should be technologically neutral. The scope of such policy should be wide so that new technological innovations can be accommodated. An open-ended consumer policy itself does not absolve the government of its responsibility for any last-minute changes. For example, UK Government published a white paper on modernizing consumer markets: consumer green paper and a smart data review. These papers narrate the challenges raised by new technologies and business models.

A challenge for the governments is to acquire the technical expertise needed to deal with the issues relating to the digital market. Digital transactions involve digital payments which are prone to online fraud. Detection of such fraudulent activities requires expertise. As transactions are global, international cooperation is required to tackle such online fraudulent activities. Due to transnational nature of digital transactions, disputes arising involve various jurisdictions. Further it involves different domains. A collaborative approach of all disciplines is required to address matters like labor rights, consumer rights, and seller accountability. Cooperation of competition authorities is required as the issues deal with consumer rights, competition matters, data protection and data security. Intergovernmental cooperation is key to solve this problem (Parikh and Majumdar 2012).

5. Role of Business and Industry

It's necessary to ensure that any new product has adequate safety features to protect the consumer data. New technologies introduced must benefit consumers, without exploiting or risking them. Consumer complaints regarding cross-border transactions have led to an increased cross border fraud. There are possibilities of getting unsafe products or products that are otherwise banned or withdrawn from the market. Canadian multistakeholder process on enhancing IoT security is a good example of such collaboration. It seeks the expertise of different stakeholders to draft recommendation to enhance the security in digital devices.

Digital world has enabled the companies to bypass physical borders. Companies set up their offices in one country and target consumers in another country with an opportunity to evade laws. Countries should modify their legislations to include greater international cooperation with their foreign counterparts. Laws need to include features like sharing of information between two jurisdictions, providing assistance in investigations, and consumer redressal targeting cross border transaction.

Authorities shall engage the online platforms to resolve the problem of digital world especially for vulnerable consumers. A vulnerable consumer is the one who is susceptible to detriment at a particular time, owing to the market characteristics for a particular product, the product's qualities, the nature of a transaction or the consumer's attributes or circumstances. Vulnerabilities can be due to age, race, ethnicity or gender, limitations with the native language, mental health problems, physical disabilities, geographical remoteness, living unemployed or with low income. Some market features like poor competition, asymmetric information, may further add in making a consumer vulnerable. Another way by which a consumer can become vulnerable is owing to the nature of transaction. Payments made through mobile are made "on the go" and usually have less authentication controls.

Online unfair commercial practices may take advantage of the limitations of communication through digital platforms and mislead the consumers into taking actions not in their interest. Business can feed upon the biasness regarding behaviors like over confidence, and hesitation. Online shopping consumers can be misled by pricing, or limited offers. Children and young people are the most vulnerable due to ignorance and lack of critical thinking. They fall prey to deceptive marketing strategies and being unable to ascertain their consequences, may take decision which may be detrimental to their interest especially when marketable nature of the advertisement is not disclosed or masked as in "advergaming". Elderly consumers face problems because of their ignorance as to the use of technologies. Most of them are not proficient in doing online transactions and the precautions that must be undertaken. They therefore encounter risks relating to security breaches. They may be vulnerable to misleading marketing practices and become victims of online scams and fraud. In order to enable consumers, use the online platforms effectively, it is required there must be proper infrastructure to enable online communications, also skills as to navigate the online environment.

6. Reducing Consumer Vulnerabilities

Permitting policies

The United States Children's Online Privacy Protection Act (COPPA) and the US FTC's COPPA Rule aim at protecting the children from fraudulent advertising and prohibit disclosure of personal information.

Improving ICT availability and competencies

A consumer dealing with the digital products must have sufficient skills and should be literate enough to understand the basic functioning of the digital devices and be able to foresee the repercussions of the same. Need is to have digitally empowered consumers.

Creating awareness

Concerned authorities are working on spreading awareness amongst elderly. For example, the US FTC has a "pass it on" initiative to encourage the elderly to share knowledge and start dialogues with family and friends, to protect against scams and fraud.⁵

Education and awareness should meet the needs of vulnerable consumers. Competition Bureau of Canada has released an educational guide to create awareness amongst consumers as to various tricks by which scams may happen, and the precautions that they may take to prevent themselves.

Better business practices

Business may adhere to code of conduct to guide them their internal management. Ensuring good business practices, following transparency and fairness must become a part of corporate governance models of companies. The guidelines like best practices of advertising and marketing, advertising practices for elders and children, disclosures and transparency guidelines and Consumer redressal guidelines should be designed and circulated.

7. Conclusions

Digital platforms have created new market opportunities, disrupting existing market structure. They are posing challenge to existing laws, existing labor laws, and copyright laws. These platforms are causing both legal and economic disruptions. Regulation of digital platforms is a complicated agenda as it involves catering to the needs of various stakeholders. Regulating these platforms shall also imply balancing innovation with need to compliances. Tech companies influence the domestic politics. There are no clear guidelines nor any uniformity, to regulating the digital platforms. US technology provision is the dominant force in shaping global norms, while EU regulation is its most influential check. Piecemeal approach is not adequate. Where there is special agency to deal with these issues reconciliation is easier than those jurisdictions where there are only courts tasked to deal with digital world cases. India is coming up with its new set of laws to tackle digital law challenges.

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⁵ US FTC, n.d.; US FTC, 2018