

# BIG TECH AND THE NEED IN INDIA FOR EX-ANTE REGULATION

Relevant for: Science & Technology | Topic: IT, Internet and Communications

To enjoy additional benefits

CONNECT WITH US

Qatar World Cup 2022 Who are the goal-scorers in FIFA World Cup semifinals before Qatar 2022?

December 13, 2022 12:32 am | Updated 12:32 am IST

COMMENTS

SHARE

READ LATER

'With India now on the cusp of a digital transformation, it is essential that the country has a level-playing field to ensure a fair opportunity for new-age start-ups and Micro, Small and Medium Enterprises' | Photo Credit: Getty Images/iStockphoto

The Indian anti-trust body, the Competition Commission of India (CCI)'s move, in October, to impose a penalty of 1,337.76 crore on Google for abusing its dominant position in the android mobile device ecosystem, has forced us, once again, to rethink the market power of Big Tech companies. When India established the CCI under the Indian Competition Act 2002, it was to protect and promote competition in markets, and prevent practices that hinder competition. However, it did not account for the network effect of Big Tech companies as a force to reckon with. As their market dominance increased rather exponentially, the European Union, the United States, and even Australia realised their market-distorting abilities and moved to transform their competition law. The EU's Digital Market Act and "gatekeepers" who will enforce rules and regulations ex-ante to foresee anti-competitive practices is an example. As for India, the Competition (Amendment) Bill, and its proposed amendments, partially address these issues. India should have used this as a chance to overhaul its competition law, especially when the Bill is due to be passed in Parliament's winter session.

In any free economy, market dominance is natural. But things get hazy when it is abused to prevent competition. As the CCI says, the intent of Google's business was to make users on its platforms abide by its revenue-earning service, i.e., an online search to directly affect the sale of their online advertising services. Thus, network effects, along with a status quo bias, created significant entry barriers for competitors to enter or operate in the markets concerned. While the competition laws address that anomaly, they are too slow to respond in complex technical sectors. By the time an order is passed, the dominant player has gained an edge — as in the case of Google. Thus, in this context, there is an urgent need for ex-ante legislation to prevent market failures and mitigate possible anti-competitive conduct.

Predatory pricing entails the lowering of prices that forces other firms to be out competed. Amazon and Flipkart were accused of deep discounting and creating in-house brands to compete with local sellers. Only recently, the CCI raided their offices in an anti-competition

probe, leading to Amazon being forced to cut its ties with Cloudfare. Thus pricing plays a fundamental role in defining the position of any digital platform in the marketplace. It is essential to establish an ex-ante framework to ensure a level playing field for local sellers. The Government's Open Network for Digital Commerce (ONDC) platform is a reliable option for these small players.

A crucial aspect of self-preferencing beyond the search algorithms is the bundling of services, especially with pre-installed apps, where the manufacturers eliminate competition without the consumer's consent. Apple is facing heat in the U.S. and Europe over pre-installed apps after Russia forced Apple to provide third-party apps at the time of installation. So, Indian competition laws need to be vigilant through an ex-ante framework.

While the data economy has evolved, we have not dealt with its regulation as effectively. There is sensitive data stored on these platforms (financial records, phone location, and medical history). Big corporations have asserted ownership of the right to use or transfer this data without restriction.

While one might attribute it to efficiency barriers, the greed for data is a motivation. Further, the storage and collection of women's and children's data need to be dealt with more cautiously to build a safe digital place.

Finally, market distortion can also lead to poorer quality of services, data monopoly, and stifle innovation. For a consumer, there is a need to establish harmony of the Competition law with the new Consumer Protection Act 2020 and e-commerce rules. The new law should include a mechanism to ensure fair compensation for consumers who face the brunt of the anti-competitive practices of the Big Techs. This should ensure that the penalties and restrictions being imposed on companies also ensure proportionate compensation for consumer losses.

With India now on the cusp of a digital transformation, it is essential that the country has a level-playing field to ensure a fair opportunity for new-age start-ups and Micro, Small and Medium Enterprises. The Competition Act of 2000, was largely constituted to deal with the physical marketplace. There is an urgent need to contextualise the law to the digital marketplace and devise new provisions with adequate ex-ante legislation. The EU has already noted this need through the Digital Markets Act. It is time that similar legislation is adopted in India.

It is equally important to contextualise India's reality. Kirana stores competing with e-retailers such as Big Basket is an example of unfair competition between legacy businesses and their digital counterparts. In such a setting, bulldozing through an EU-based approach to competition might not be the best way for Indian marketplace interests in protecting the local digital economy. Thus, India needs a new ex-ante-based framework that promotes competition by ensuring a level-playing field for the big, the small, the old and the new.

Amar Patnaik is a Member of Parliament, Rajya Sabha from Odisha and an advocate. He was a former CAG bureaucrat. The views expressed are personal

COMMENTS

SHARE

[technology \(general\)](#) / [online](#) / [laws](#)

BACK TO TOP

Comments have to be in English, and in full sentences. They cannot be abusive or personal. Please abide by our [community guidelines](#) for posting your comments.

We have migrated to a new commenting platform. If you are already a registered user of The Hindu and logged in, you may continue to engage with our articles. If you do not have an account please register and login to post comments. Users can access their older comments by logging into their accounts on Vuukle.

**END**

Downloaded from **crackIAS.com**

© **Zuccess App** by crackIAS.com

CrackIAS.com