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## EMERGENCE OF E-COMMERCE AND COMPETITION ISSUES

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**Abstract:** The e-commerce entities today, has created a much greater impact than any other entities. Despite being new they have surpassed many other forms of business in terms of accessibility and revenue. This business structure is highly dependent on advanced and innovative technology. In order to compete, these entities rely on certain anti-competitive measure which not only hampers the business of the existing traditional market but also creates hindrance towards other e-commerce entities. The competition regulation in India is not a very old concept and thus it still has many avenues that are yet to be ventured fully. The Commission has constantly monitored the activities of such entities and also has taken steps to prevent them from practicing unfair mechanisms like predatory pricing and making vertical agreements. The commission is continuously on the lookout for is the abuse of dominance by such entities and to find out they have to determine the relevant market. In this paper, observations have been made that might make such determination easier and also focuses on the other unfair mechanisms that the entities generally resort to gain market power.

**Index Terms - E Commerce, Anti-competitive, Predatory Pricing, Vertical Agreements, Relevant Market.**

### I. INTRODUCTION

Over the years, there have emerged several sectors that showed a lot of promise but failed to prove its worth. However, electronic commerce, or commonly known as the e-commerce sector has shown a lot of potential economically and have also lived up to the expectation. With its few years of operation, the e-commerce sector in India currently has a valuation of almost 200 billion dollars. Due to the emergence of this sector, the approach towards and understanding of the retailer ship has been given a new dimension. E-commerce allows its customers to choose from a wide variety of choices and makes the product available at their doorstep. Apart from ease of doing business and reducing the cost of conducting business this type of business model removes non-transparency of all kinds which was previously seen among offline retailers. This sector also allows other small scale businesses to thrive through their medium. It allows them to sell their products online through their portal to survive the competition.

This new form of business that involves the use of high-level tech forms a part of the so-called new economy of the country.<sup>1</sup> Such new forms of business are generally categorized as ones using advanced technological systems, having higher innovation rate, increasing returns to scale but low marginal cost. One of the major reasons why e-commerce gained so much of popularity in a short period is due to network externality or demand-side economies of scale. This phenomenon becomes significant when the goods or services so provided by online retailers become popular and has a long list of subscribers. Subscribers are gained by advertising through various online platforms like social media since almost every individual has access to the internet. It is a well-known fact that innovation has always led to economic advancement. However, this new form of business which involves usage of coming to age technology may have an upper hand in terms of market control and predatory pricing. Due to having such competitive advantages, other participants in the market may be susceptible to abuse of power. The competition regime in India is relatively new and certain grey areas in this regime need attention. The e-commerce sector is a booming business form and is yet to be regulated with stricter norms that prevent any kind of unfair competition. The

Competition Commission of India (CCI) aims at creating equilibrium in the market for all players irrespective of their market share. The major concerns that CCI has to deal with which are whether they have an exclusive supply/distribution agreement or do they rely on predatory pricing to get an edge over other competitors in the market.<sup>2</sup> Another problem that the commission has to face is determining relevant market for such e-commerce entities and concluding whether such entities are dominating and having any detrimental effect on competition.

The regulator, CCI has the power to scrutinize the agreements relating to the electronic commerce leading to the Appreciable Adverse Effect on Competition (AAEC).<sup>3</sup> It ratifies the framework for the regulation of the anti-competitive agreements including vertical restraints. There are two types of restraints that are broadly categorized under Competition law that is horizontal and vertical restraints. The e-commerce division is perniciously affected by the competition related issues emerging out of vertical restraint consisting of resale price maintenance and the exclusive distribution network. An interesting aspect regarding online platforms are distinct in nature and cannot be compared with the traditional buyer-seller relationship

## II. RELEVANT MARKET

The operative part of Competition Law deals with determining abuse of dominance or reviewing the powers of a dominant player in the market. The first step that the competition commission has to undertake to prove the existence of abuse of dominance is identifying the relevant market. Only after determining the relevant market the regulator can prove the abuse of dominance. The relevant market for a product or service would be the market in which competition takes place. The competition in such a relevant market is among the replacement products in question. The enforcement of competition regime would not be possible without identifying such a relevant market. "The extent to which firms can increase their prices above normal competition levels depends on the possibility for consumers to buy substitute goods and the ability for other firms to supply those products."<sup>4</sup> However, it must be kept in mind that having or possessing a dominant position in the market does not necessarily mean abuse of that position. Such a position can be gained through greater economic performance, innovation, or other non-prohibited measures taken by the business. Any act on the part of the enterprise that leads to abusing or taking advantage of such position is restricted and prohibited by the act.<sup>5</sup>

The Competition regime enumerates the relevant market "with reference to the relevant product market or the relevant geographic market or with reference to both the markets".<sup>6</sup> To put it simply, the relevant market outlines a definite geographic area within which it identifies a specific product or service or an echelon that are offered by the enterprises. A relevant market is comprised of two dimensions i.e. product and geographic. The product market identifies the product and services while the geographic market identifies and outlines the location of the producers and sellers of the product or service.

### PRODUCT MARKET

The term 'relevant product market' being a part of relevant market is defined under section 2(t) as "a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, because of characteristics of the products or services, their prices and intended to used"<sup>7</sup> Substitutability and interchange ability are the determining factors to establish the extent of the relative product market. Other relevant factors include demand-side factors which are tangible characteristics, end-use, price, and consumer choices as well as supply-side factors which are categorization of industrial products, specialized producers and barring of in house production as per the provisions contained in Section 19(7) of the Act.<sup>8</sup>

Price variation plays a crucial role to determine the differences in products that are functionally substitutable but in reality, they are not interchangeable. The most common issue that CCI has to deal with is analysing the question whether e-commerce sectors and traditional markets form the part of the same relevant market. The Commission inferred that both the online and offline market might vary in terms of shopping experience and discounts provided by the seller, so the buyer must have multiple options to purchase the product accordingly. It signifies that if the price of the product increases on the online platform then the consumer might shift to the offline market and vice versa. The question of whether e-commerce creates a new relevant market depends upon case to case. In *Ashish Ahuja v. Snapdeal.com*<sup>9</sup> as per CCI online portals and offline markets are the two varying means of dissemination of the same product and are not two varying relevant markets. In *Mohit Manglani v. Flipkart*<sup>10</sup>, CCI further observes that the buyers have the opportunity to differentiate the products on basis of price and also find out the pros and cons of it via these online portals. The CCI disagreed with the view that the individual product cannot be held as a separate relevant market by itself. But in the taxi aggregation case, CCI held that these 'radio cab services' are to be a separate relevant market by itself just because the consumers cannot substitute these services with other modes of transport.<sup>11</sup>

The test to determine the relevant market is the 'Hypothetical Monopolist' or 'Small but Significant Non-transitory Increases in Prices (SSNIP) test' which enumerates relevant market by establishing a given increase in product prices which would be remunerative for a monopolist in the prospective market. This test acts as a crucial tool in the competition law involving abuse of dominance and in approval or blocking of mergers. The idea to use this test for determining the relevant market was also included in the *US Merger Guidelines of 1982*. This test was highly adopted worldwide but countries like UK, USA, Australia, New Zealand, Brazil, the EU, and Canada made it popular. The implementation of this test starts with the smallest plausible market to increase the price by 5% profitable. If there is no profit then the entity lacks adequate capability to increase the price. Thus the next best alternate is added to the relevant market to raise the price. Hence, this process resumes until Hypothetical Monopolist could profitably inflict a 5% increase in price to define the market. Thus, this test is used to demonstrate the relevant product market and act as a framework to analyse the effects of merger under competition law. This test

paved the way for a systematic method to arrive at the definition of relevant product market. It surely doesn't imply that competition regime didn't exist before the emergence of this test.<sup>12</sup> It only added one more method under the competition law methodology.

In precedents<sup>13</sup> it was observed that the parties argued regarding the addition of the non-alcoholic beverages as the same product market as of the bottled water because their basic function is to quench the thirst. The EC inferred that the consumer not only wants to quench their thirst but also quench the thirst from the healthy, natural source of a liquid form which provided minerals. Therefore, the soft drinks were excluded.

It can be fathomed through the judgments of CCI that until recently online and offline were considered two different channels of dispersal of the same product market. However, the judgment of taxi aggregation services, the regulator observed that the radio cab services act a separate relevant market on the ground that involves factors like benefit and ease of choice, etc. which could be easily argued in favour of e-commerce sector as far as the product market is concerned. Thus delineating the concept of the SSNIP test, acts as a productive tool for the determination of the relevant product market.

## GEOGRAPHIC MARKET

The concept of establishing the relevant geographic market is as important as determining the relevant product market. The relevant market cannot be delineated just by finding out the relevant product market. Both the product market and geographic market as a whole form the relevant market. The relevant geographic market under the act is enumerated as "a market comprising the area in which the conditions of competition for the supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighboring areas".<sup>14</sup> The Act further provides that "the commission shall, while determining the relevant geographic market, have due regard to all or any of the following factors, namely; regulatory trade barriers; local specification requirements; national procurement policies; adequate distribution facilities; transport costs; language; consumer preferences; the need for secure or regular supplies or rapid after-sales services."<sup>15</sup>

The concept of the geographic market is more or less alike to the one on which the product market is governed.<sup>16</sup> A geographic market is determined from a purchaser's point of view of the availability of substitute products made or sold at various locations. To determine whether two locations are a part of the same relevant market, observations need to be made concerning the reactions of the purchaser i.e. with a small but significant increase in the price of a product in one location compels the purchaser to switch to a different location. If the purchaser does have this option then both the locales are to be considered a part of the same geographic market or else two different geographic markets.

The ascertainment of relevant geographic markets is one such issue that needs to be conclusively decided to establish abuse of dominance. The relevant market definition for online businesses often involves evaluating whether brick-and-mortar substitutes are available for the given product or service.<sup>17</sup> The same principle needs to be applied to outline the geographic market. The internet is a huge virtual space that connects computer networks and computer facilities around the world and outlining its boundaries is almost impossible due to the lack of its physical existence. In *America Online, Inc. v. Great Deals.net*<sup>18</sup> it was found that the geographic market could not be limited to the users of a specific service, and "not only because there are other persons with access to the Internet, but also because there are other means of advertising to those persons and to AOL subscribers."<sup>19</sup>

To ascertain the relevant market, data needs to be collected empirically. One of the ways by which regulators can decipher such relevant market is by adopting the Small but Significant Non-Transitory Increase in Price (SSNIP) test. This analytical framework also known as the 'hypothetical monopolist test' studies a hypothetical monopolist of a given set of products in a given geographical area. The competition commission will have to examine the market under two heads, first on price levels and changes and second on the degree of switching and its cost.

While examining price levels and its changes the regulator has to keep in mind that estimating price elasticity is rather difficult. Instead, it can be substituted by price level and the extent to which such price levels fluctuate. In e-commerce where transparency concerning price is high, it is easier to collect data in that regard. However, making such price comparisons may turn out to be more difficult if e-commerce enterprises start discriminating based on customers and charge different prices for every other customer. In the e-commerce sector data concerning price levels and its changes will be useful in determining the geographical scope.

The regulator while examining the second head i.e. the degree of switching and its cost, they have to analyze the data presented by companies on the number of customers switching from traditional market to e-commerce keeping in mind that switching can occur due to various reasons and not just for price. Such switching of channels may occur due to customer preference or change in purchasing patterns, which implies little about the ability of each form of commerce to constrain the pricing decisions of the other.<sup>20</sup> For instance, people living in rural or suburban areas prefer traditional markets over e-commerce unlike people living in urban areas. Such choices of customers make geographic segmentation which helps in the systematic dispersal of goods both online and by the traditional method. Taking another instance, the conditions of demand and supply of online cab-hailing services, will, vary substantially from one locality to another. The Competition Commission of India made this concept applicable in *Meru Travel Solutions Private Limited v. Uber India Systems Pvt. Ltd*<sup>21</sup> and held that a relevant geographic market was restricted to the particular city in question. The reason being first, radio cabs are allowed to operate only within the city limits and secondly, the regulation governing the radio cabs varies from one state to another.

“The use of geo-location tools to ascertain the location of potential users and target services to them could also lead to such businesses being delineated as independent relevant markets on the basis that the competitive constraints faced by such businesses are location-specific.”<sup>22</sup> This means that the existing minor entities may often be linked to the consumer’s locale thus demarcating a geographic boundary and such demarcations could be held as a separate relevant market, thus making it possible for the e-commerce sector to dominant within that specific area.

### III. ABUSE OF DOMINANCE

The advent of a new medium for selling and purchasing of goods and services online, a new form of business structure has evolved. E portals like Flipkart, Amazon, Zomato, and few other online platforms provide the goods and services at a lower price compared to the traditional market in order to capture the market. They can use this tactic of lowering the price or providing discounts because this business model is currently blooming in India as it is in its growing stage and, because of its private equity funds and investors who can afford to give heavy discounts to capture the market. Due to this very nature of the online platform, it lands up being in a dominant position.

'Dominant position' is enumerated as a position of strength enjoyed by an entity in the relevant market by the two main factors which are market share and entry conditions. The Act provides a list of several factors for the determination of dominance by an enterprise as per Section 19 of the Act. It is important to mention that the dominant position must be enjoyed by an enterprise acquired through its legitimate means such as product innovation and amazing production quality and distribution mechanism. However, CCI did not address the issue of collective dominance which could be a recent trend for the abuse of dominance.<sup>23</sup>

One of the most challenging aspect under competition law for both the online and offline market is to deal with abusing of dominant position or commonly known as monopolization by a firm. However, holding a dominant position is not to be considered *per se* illegal but what is considered to be illegal is the behaviour carried by that firm. These anti-competitive behaviour are either exclusionary which is directing towards competitors or exploitative in nature towards the customers to find out its effect in the relevant market.<sup>24</sup> Through an economical approach, the dominant market player uses its bargaining power towards its business partner for its own advantage by creating an artificial demand in the market with respect to the products, so that, afterwards they can raise the prices in the market and sell the goods at higher price. This leads to misusing of the market power and exploiting the customers by disturbing the demand supply equilibrium. The issue of refusal to deal or collective refusal to deal is also an anti-competitive practice which creates entry barriers for the new participants.

Market share being an important constituent of determining dominance the competition commission is of the view that market share is not always a conclusive way to determine abuse of dominance. In *Meru Travels Solutions Private Limited v. Competition Commission of India*<sup>25</sup> the appellate competition tribunal was of the view that dominant position does refer to a 'position of strength' but it does not necessarily come out of a market share in terms of statistics.

A standard procedure or a standardized format should be followed in order to file a report. A strict data collection methodology should be established which makes it easier to review for the commission. CCI regulates the e-commerce sector to maintain the check and balance mechanism so that e-commerce sector and the traditional market do that it does not indulge in unfair practices or leads to abuse of dominance which will create an appreciable adverse effect on competition. Hence the objective of the commission seeks to promote the healthy competition between the enterprises to safeguard the interest of the consumer.

### IV. PREDATORY PRICING

Traditionally, the concept of predatory pricing was very straight forward. It could be safely assumed that the entity which is setting such arbitrarily low prices is a dominant entity in the market. The prices set by them are so low for a specific period that the remaining players in the market are forced to leave and new entities are restricted from entering thus abusing their dominant position. Hypothetically it could be held that all the entities are on the same footing concerning efficiency, this implies that both the dominant entity and the other entities have suffered losses significantly. The reason why the dominant entity sets such prices irrespective of the fact that it is suffering a significant loss is that they are somehow able to recover despite such loss. The remaining entities though at par with the dominant entity in terms of efficiency are unable to recover from such losses. However, after setting the prices predatorily, it was found that the benefits, in the long run, were far more than predicted. “The predatory campaign could be, seen as an investment in reputation which could pay dividends in other geographic or product markets by deterring entry or disciplining rivals.”<sup>26</sup>

Section 4 of the Competition Act, 2002 prohibits dominant entities from abusing their position by imposing prices that adversely affect competition, by limiting production, restricting market entry, and making contracts with parties having unrelated supplementary conditions. Predatory pricing is now a commonly used market strategy to completely wipe out other competitors in the market by e-commerce sectors. The CCI looks into the average variable cost instead of marginal cost to find out whether the online retailer is selling goods and services below the selling price. The (Determination of Cost of Production) Regulations 2009 provides that in specific cases to meet status quo, cost concepts such as ‘avoidable cost’, ‘long run average incremental cost’ or ‘market value’ may also be considered. It is obvious that the cost structure of e-commerce sectors would be different from the traditional business. Since it allows such entities to adopt pricing technics that not only allow them to earn profits but also attract customers. To keep this up, entities have to resort to some kind of innovative pricing technics. One such innovative technic could be setting a higher fixed cost and low variable cost. Such a method allows them to adopt a low-

cost pricing strategy without necessarily being predatory. The commission may have to look into some other factor apart from the average variable cost in case they are unable to find predation.

The Department for Promotion Industry and Internal Trade (DPIIT) issued directions for foreign direct investment on e-commerce in 2016.<sup>27</sup> The commission received complaints and allegation was made against various e-commerce entities for violating various norms laid down in the guidelines. The commission in retaliation directed the e-commerce giants to provide certain information like their top sellers on their respective platforms and also a list of the prices suggested by the vendors and how the platform provided support in that regard. These entities also had to reveal certain classified information like their capital structure, business process, business model, etc. The e-commerce entities argued that they had no freedom in deciding the prices of products displayed on their portal for sale. It is the sellers who decide the prices by comparing the prices set by fellow sellers. It is also at the discretion of the sellers that the discount is provided by the portal. However, most of these cases were dismissed prima facie on the fact that e-commerce does not form a separate relevant market thus being a part of the same market they cannot hold a dominant position and cannot set prices arbitrarily.

In *All India Online Vendors Association (AIOVA) v. Flipkart India Private Limited & Flipkart Internet Private Limited*<sup>28</sup> information was filed by AIOVA that Flipkart India gave preferential treatment to certain sellers. The CCI held that Flipkart was not a dominant entity in the market due to other competitors like Amazon, SnapDeal, etc. It was also evident that Flipkart didn't create any entry barriers for new competitors like Paytm Mall. AIOVA challenged the competition commission's decision before NCLAT and also referred a decision decided before the Income Tax Appellate Tribunal, *Flipkart India Pvt. Ltd v Assistant Commissioner of Income Tax*.<sup>29</sup> NCLAT analyzed the observations made by the assessing officer under the Income Tax Act, 1961. It was found that Flipkart was making losses due to practicing predatory pricing and such losses were categorized under business expenditure and they were claiming credit for the same. It was also found that Flipkart was making attempts to establish a market monopoly. Although the income tax tribunal had foregone the taxes imposed on them but NCLAT decided that such information was valid for making a prima facie case for predatory pricing and ordered the CCI to direct the DG to investigate the same.

The various competition commissions around the world have made their respective interpretations to deduce the presence of predatory pricing in a particular market. The European Commission was of the view that the entity so practicing predatory pricing must have an implied intention of reducing or eliminating competition. They made the following conclusion in the *Tetra Pack* case where it was said that "it must be possible to penalize predatory pricing whenever there is a risk that competitors will be eliminated...The aim pursued, which is to maintain undistorted competition, rules out waiting until such a strategy leads to the actual elimination of competitors"<sup>30</sup> Recovery of losses by the entity so resorting to predatory pricing was not necessary condition according to the European Commission.<sup>31</sup> However, the courts of the United States of America took a different view. They laid down two conditions to infer predatory pricing; first, determining relevant cost and then looking into whether the prices so set by the entities are below such relevant cost; second, the predator must have "a reasonable prospect or a dangerous probability of recouping its investment in below-cost prices".<sup>32</sup> The US Supreme Court believes that the absence of the second condition will lead to aggregate lower prices and customer welfare.

The concept of recoupment or recovery of losses is a very important concept that the CCI may adapt depending on the circumstances of the case despite such principle not being mentioned in the Act. In the *National Stock Exchange (NSE)* case,<sup>33</sup> it was necessary to consider this principle depending on the facts of the case. Despite not using such relevant principle CCI paved the way for determining predatory pricing in a much easier manner i.e. it could be inferred without relying on complex economic data and also without performing time consuming tests. In the *NSE* case, CCI made its decision relying on subjective competitive fairness. Thus e-commerce entities that have a relatively lower business expense and greater access to capital compared to offline entities can indulge in unfair pricing much easily. However, such advantage does not necessarily mean that the entity will resort to unfair pricing. The commission analyzing the circumstances of the case should resort to the necessary test of predation. The principle of recoupment may at times prove to be more beneficial than forming a subject view and where necessary proper economic analysis should be made to get the most accurate results and prevent anti-competitive practices.

## V. VERTICAL RESTRAINTS

In the field of commercial transaction e-commerce being a novel development has drastically transformed the commercial transaction still there are a lot of anti-competitive practices that exist, which the commission has to look upon. A relevant question that crops into our mind is whether the threat to competitors is considered to be a threat to the competition? To answer briefly, it is observed that the competition law aims to prevent competitors from creating any '*appreciable adverse effect on competition*' (AAEC).

In the view of the above discussion, the CCI holds the capacity to scrutinize any agreement about e-commerce sector which leads AAEC under section 3 of Competition Act, 2002. This provision lays down the structure for monitoring anti-competitive agreements including vertical restraints.<sup>34</sup> However AAEC has not been defined in this section still there are various factors specified in the Act that the Commission should take into consideration which includes whether the competition creates any barriers or it drives out the existing competitors. The Commission should consider the pro-competitive effects of an agreement.<sup>35</sup> The competition act seeks to regulate two kinds of an agreement which includes horizontal agreements as well as vertical agreement. The horizontal agreements are presumed to harm competition but it does not necessarily mean they are anti-competitive; it keeps the door open for the parties to rebut on the presumption and provide evidence that their agreement does not create any appreciable adverse effect on competition. However, vertical agreements are allowed to the point they cause, or likely to cause any AAEC. Section 3(4) specifically deals with vertical agreements which are prohibited stating these agreements are between enterprises at different levels of the production chain in the market concerning goods and services. Vertical agreements include tie-in arrangement, exclusive supply agreements, exclusive distribution agreements, refusals to deal, and resale price maintenance.

'Rule of Reason' is the accepted and balanced method of assessment for analysing anti-competitive agreements. The effect on competition is found through the facts of the case, the market, the existing players as well as the actual or probable restraint under this doctrine. In the case of *Tata Engineering and Locomotive Co. Ltd v. Registrar of Restrictive Trade Agreement*<sup>36</sup>, it was observed that the apex court interpreted the rule of reason in cases of agreements for the violation of restrictive business practices. Under this doctrine, the test is to determine the balance between the pro-competitive and anti-competitive effect, and subsequently, if the pernicious effect is considered to be high then it is prevented by the competition commission. On the other hand, the 'effects doctrine' is a concept which grants jurisdiction to the competition commission over any agreement or dominance which takes place outside India but is likely to have its effect in India causing AAEC. This doctrine empowers the commission to extend its jurisdiction beyond the "principle of territoriality" under competition law.<sup>37</sup> It will hold guilty those enterprises which may not be located in the country; however, its anti-competitive act has its effect in the country. Therefore with the help of this doctrine the scope of national competition law has expanded over cross border business activities.

In *Mohit Manglani v. Flipkart*<sup>38</sup>, the issue of exclusive distribution agreement was brought before the commission, whereby the informant alleged that the opposite parties which include Flipkart, Amazon has entered into an exclusive distribution agreement which is between the e- portals and the retailers to sell those exclusive products which are available only on those selected e portals and nowhere else. However, the case was closed as CCI did not find any anti-competitive conduct against these e portals yet it opens the door for future reference that these practices should be discouraged by the e portals or the traditional markets.

Further in the case of *Jasper Infotech Pvt. Ltd v. Kaff Appliances Pvt. Ltd.*<sup>39</sup>, it was observed that the manufacturer of the chimneys of Kaff appliances issued a caution notice whereby mentioned that the online portal is selling those products at a much lower price which was below market operating price and thus intimating to the public at large that these products might be doubtful and no warranties will be honoured to the consumers if they will purchase from Snapdeal. Therefore CCI was approached by Snapdeal stating that the manufacturer is preventing the authorized distributors from selling its products via online channel thus imposing anti-competitive practices. CCI inferred that Kaff Appliances should not be penalized because the restrictions imposed by Kaff were not anti-competitive and thus order for inquiry under section 26(1) of the act.

Exclusive agreements are not per se anti-competitive in nature but these agreements are the potential to raise competition in the market if they are used as an exclusionary tactic to foreclose the competition to new rivals. At times these agreements are pro-competitive and help in protecting the interest of the consumers but restraints involving resale price maintenance may hurt the price competition between the different channels of distribution and the consumers. Also, this needs to be considered that these agreements can make the rival platforms to incur additional cost to induce the service providers to give up the exclusive contract with the major platforms. On the other side, these agreements also help in generating efficiency and competition among the brands. Therefore exclusive agreements needs to be assessed on case to case basis and the commission needs to decide it under the specified provision of the act with the help of the rule of reason approach.

## VI. CONCLUSION

E-commerce sectors have made a positive impact on the economy of the country. This new form of business has reached the most remote corners of the country previously which was neither possible nor viable. The only reason for such success in such a small amount of time is due to the use of advanced technology and innovation. However, this sector is yet to develop fully and still at a nascent stage.

This new form of business has aroused a lot of attention from the Competition Commission of India (CCI). The competition regime in India itself is still at a growing stage and is yet to take full bloom. The e-commerce sectors have their way of conducting business that is different from traditional retailers. Thus, making it difficult for the regulator to assess whether such entities are relying on any anti-competitive practices. As a regulator the CCI has to ensure economical fair play i.e. at any point in time one of the competitors should not have any undue advantage over the other, they must also ensure economic efficiency and must have regulations that serve both as an incentive to attract competitors and maintain fair play. Any kind of anti-competitive practices are the enemy of the economy and needs to be defended at any cost.

One of the main reasons for which competition law was established is to find the abuse of dominance. It has been observed on several occasions that dominant players in the market often sought to take advantage of their position. The challenge for the competition commission comes up when they have to determine the relevant market for finding such abuse. E-commerce operates entirely different from traditional retailers. The commission must widen its horizon to determine accurately whether the entities are committing abuse in lieu of their position.

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