RELEVANT MARKET UNDER COMPETITION LAW – IN THE CONTEXT OF BANKING & FINANCIAL SERVICES

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ABSTRACT

This research article delves into the complexities of defining relevant markets within the banking and financial services sector. It underscores the significance of market definition in competition law enforcement, particularly in assessing market power, evaluating mergers, and detecting anti-competitive practices. The article explores this sector's diverse products along with the key factors that determine whether these products or services belong to the same product market. It also analyses how factors such as product characteristics, consumer preferences, regulatory restrictions, and geographic scope influence market definition.

Furthermore, the article examines landmark cases and regulatory decisions in India that have shaped the understanding of relevant markets in this sector, along with literature review of journals and publications written by experts and scholars in this field of research. By drawing from this academic literature and real-world examples, the article provides a comprehensive overview of relevant market analysis in the Indian banking and financial services landscape.

INTRODUCTION

In Competition Law, the notion of 'Relevant Market' is one of the fundamental tools used to determine market power and anti-competitive conduct. It defines where competition occurs, which is the product market as well as the geographic market.

The concept of relevant market plays a critical role in enforcing competition laws. It is the basis for determining the competitive effects of mergers and acquisitions, possible cartels, and instances of abuse of dominance, and, in general, the promotion of fair competition favourable for the marketplace.[1]

Product Market: The range of products or services that customers see as viable alternatives or substitutes for each other based on their features, cost, and intended purpose.	**Geographic Market**: The region where companies actively participate in the supply and demand of specific products or services, and where competitive conditions are relatively consistent.

A clear definition of a relevant market enables the competition authorities to determine market power, potential anti-competitive behaviour and draw befitting approaches to arriving at acceptable remedies that safeguard consumers' interests and encourage healthy competition.

Relevance & Need

The problem of defining relevant markets is particularly complex with regard to the banking and financial services sector and its products and services. This makes market demarcation even more challenging due to high dynamism in the industry due to issues like technological changes and emergence of fintech firms.

To ensure that there is healthy and effective competition in banking and financial services sector, many competition authorities require proper understanding of relevant markets. Due to the complexity and integration of the financial products, increased competition, and disruptions

[1] Crane, Daniel A. (2024) *"Defining Relevant Markets in Digital Ecosystems,"* Journal of Law & Innovation: Vol. 7: Iss. 1, Article 3.

through technological advancements such as fintech, such markets must be understood to safeguard the interest of consumers and prevent anticompetitive practices.

BANKING & FINANCIAL SERVICES: AN OVERVIEW

In studying competition in the banking and financial services industry, setting the market scope is always necessary. This involves identification of the specific product or service and area of competition.

Product Market in Banking & Financial Services

The product market concerns all products or services that the consumer regards as being homogenous in the marketplace. In the present context, this can range from basic retail banking products to complex investment banking services such as:[2]

- Retail Banking Products: Savings accounts, current accounts, personal loans, mortgages, credit cards
- Corporate Banking Products: Corporate loans, trade finance, cash management services
- Investment Banking Services: Mergers and acquisitions advisory, underwriting, securities trading
- Insurance Products: Life insurance, health insurance, general insurance
- Asset Management Services: Mutual funds, portfolio management services
- Payment Services: Debit cards, credit cards, mobile wallets, payment gateways, other forms of electronic payment solutions
- Foreign Exchange Services: currency exchange, international money transfers
- Brokerage Services: stockbroking, commodity broking, other services related to buying and selling securities on behalf of clients

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[2] *Defining Relevant Markets in Digital Ecosystems Authors,* Daniel A. Crane, University of Michigan - Ann Arbor, Journal of Law Innovation (2017).

- Fintech Products and Services: peer-to-peer lending, robo-advisory, blockchain-based financial services

The key factors that determine whether products or services belong to the same product market are –

- **<u>Product Characteristics</u>**: The inherent features and functionalities of the products or services. For example, a savings account and a fixed deposit account, though different in function, possess similarity in features and therefore may be categorized under the same product market.
- **<u>Intended Use</u>**: The reasons for which the products or services are being consumed. For instance, credit cards and personal loans are generally used for short term credit, but they might be in separate product markets, owing to the distinctions of their function and costs associated with each type.
- **<u>Consumer Preferences</u>**: The buyers' attitude towards the substitution of the goods or services. Thus, a consumer who is in the market for a home loan can consider products offered by different banks or housing finance companies as alternatives.

Geographic Market in Banking & Financial Services

The geographic market involves the geographical area in which competition of demand for and supply of certain products or services takes place and in which the competitive conditions are relatively similar. This may span over a localized or a regional market to a national one or even an international one depending with the nature of the financial products or services to be sold.[3]

- In the case of retail banking products, the geographic market may be localized or regional based on branch infrastructure, consumers' loyalty to local retail banks or legal requirements.

- In case of Corporate and Investment banking the geographic market might be national or even global depending with the global operations of the multinationals and other institutional customers.

Factors that primarily influence the geographic market:

[3] Russo, Francesco; Stasi, Maria Luisa, *"Defining the relevant market in the sharing economy",* ECONSTOR (2016).

1. **Regulatory Restrictions**: Legal regulation, primarily licensing requirements, or restrictions that apply to operations in other countries may decrease the geographical competition.

2. **Consumer Preferences**: The customers may prefer dealing with the local banks/Financial Institutions owing to familiarity with the language or culture which restricts the geographic market.

3. **Distribution Networks**: The presence of physical branches or the reach of online platforms can influence the geographic extent of the market.

4. **Transportation Costs**: High transportation costs can limit the geographic scope for certain financial services.

Demand-side substitutability looks at the consumer's perspective. If a product's price increases, are consumers willing and able to switch to a different product that satisfies the same need or provides a similar function? The degree of demand-side substitutability helps determine the boundaries of the relevant market. If consumers readily switch to other products, the market is likely broader and includes those substitutes.

Supply-side substitutability focuses on the producers' perspective. It examines whether other companies can easily and quickly switch their production or supply to offer a similar product or service in response to a price increase or other market changes. If suppliers can readily adjust their production, the relevant market may be broader, as these potential suppliers constrain the ability of existing firms to raise prices.

LITERATURE REVIEW

To define relevant markets, **Bishop and Darcey**[4] pointed out that a market should include all substitutable products that pose significant competitive pressure on the product in focus. This principle is most appropriate for industries such as banking and financial services since consumers can access a full range of service providers and a variety of options for meeting their financial needs.

It is well documented in the literature that demand-side and supply-side substitutability play an important part in the definition of product markets. According to **Harris and Jorde**[5], demand-side substitutability, as dictated by customer preference and their propensity to shift to another

[4] Bishop and Darcey, *"The Relevant Market and the Competitive Process,"* (1995).
[5] Harris and Jorde, *"Market Definition in the Merger Guidelines: Implications for Antitrust Enforcement,"* California Law Review (1983).

product, is instrumental in defining markets. In contrast, **Katz and Shapiro**[6] emphasize the concept of supply-side substitutability, which points to the capabilities of firms to shift production in order to provide substitutes. In banking both demand and supply substitution themes are paramount since customers are in a position to switch between several products and providers, and the providers that include banks and financial institutions can in turn adjust to the needs of the evolving market demands.

Another important element that has been addressed in the theoretical explanations concerning relevant markets is the geographical dimension of those markets. The work of **Sleuwaegen and Yamawa**ki[7] focuses on the determinants of the geographic scope of competition, such as transportation costs and trade barriers and customer preferences. In the context of banking services, geographic markets may be local, regional, national, or even global based on the service being offered as well as the legal framework. This has even been compounded by the transformations in the banking and financial sectors where digitisation has made markets geographically borderless.

The qualifications of market definition have also been explored in the current literature in view of the developments in technology and emergence of fintechs. **Haucap and Stiebale**[8] explain the problems of digital platforms and network effects, whereas **Gomber, Koch, and Siering**[9] describe the impact of fintech developments on competition and market reference. These studies assert the importance of a strategic perspective on market definition based on the continuous changes and advancements in the banking and financial services market.

CRITICAL ANALYSIS

Defining relevant markets in this sector is challenging due to technological advancements, multi-product institutions, network effects, and regulatory frameworks. However, a precise definition is essential for effective competition law enforcement and ensuring a fair and competitive financial landscape.

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[6] Katz and Shapiro, *"Systems Competition and Network Effects,"* Journal of Economic Perspectives (1994).
[7] Sleuwaegen and Yamawaki, *"The Formation of the European Common Market and Changes in Market Structure and Performance,"* European Economic Review (1988).
[8] Haucap and Stiebale, *"Competition and Antitrust in Internet Markets,"* Handbook of Antitrust Economics (2014).
[9] Gomber, Koch, and Siering, *"The Impact of Fintech on Competition in the Financial Sector," The FinTech Book* (2017).

Nature & Characteristics of Products/Services:

1. **Local vs. Global Reach –** Some financial services are inherently local (e.g., branch-based retail banking), while others can be provided remotely (e.g., online investment platforms). This impacts the potential geographic scope of the market.

2. **Complexity and Customization –** These products are often complex or highly customized which may necessitate local presence and knowledge, reducing the geographic market.

3. **Market Structure and Competition –**

   - Concentration: Analysis of the level of competition may give an indication as to the range of geography over which a product or service is available, if few players control a particular market, this might mean there is a larger geographical scope within which these players can compete due to customer affordability.

   - Barriers to Entry: Thus, it can be stated that barriers to regulations, high capital investment or well-established brand image intervene with the scope of the market in terms of geography.

4. **Economic Conditions and Infrastructure –**

   - Income Levels and Demand: The economic development and consumer need for specific financial services may differ across geographical locations thus an impact on the geographic market definition.

   - Technological Infrastructure: Availability of the internet and mobile phones may either facilitate or hinder the coverage of the online financial services, thus influencing the geographic market.

5. **Historical and Cultural Factors –**

   - Established Relationships: Customer relations as well as brand identity can determine the geographic market notably in the case of retails, banking services.

   - Cultural and Linguistic Factors: This implies that certain competitors will be restricted in terms of geographical location where they compete in different financial services.

6. Specific Case Context –

- Merger Analysis: The geographic market may be defined differently for describing the scope of merger than for analysing the abuse of dominance depending on the circumstances and effect on competition.

Cases

- The *Competition Commission of India (CCI) in the 'Shri Shamsher Kataria v. Honda Siel Cars India Ltd & Ors'*[10] case considered the relevant product market to be the "market for passenger vehicles" and not just the market for a specific brand or model.

- In the *'Deutsche Börse AG / London Stock Exchange Group plc*[11]*'* merger case, the European Commission assessed the impact of the merger on various product markets, including the market for clearing services for fixed income instruments and the market for trading and clearing services for single stock equity derivatives.

- In the *'United Bank of India & Others v. Competition Commission of India & Another'* [12]case, the CCI defined the relevant geographic market as the area within a 5-kilometer radius from the branch of the concerned banks, considering the local nature of retail banking services.

- In contrast, the CCI in the *'Thomas Cook (India) Ltd. v. MakeMyTrip (India) Pvt. Ltd.*'[13] case defined the relevant geographic market as 'India' for the online travel agency market, recognizing the nationwide reach of these platforms.

METHODOLOGY

This research article follows a qualitative method, which mainly uses secondary data sources. The study relies on a synthesis of literature review in which articles, journals, and publications from Competition law and Economics have been reviewed alongside information gathered from leading authors and scholars in this field of study.

[10] *'Shri Shamsher Kataria v. Honda Siel Cars India Ltd & Ors',* Case No. 03/2011.
[11] Deutsche Börse AG / London Stock Exchange Group plc: Case M.7995, European Commission.
[12] United Bank of India & Others v. Competition Commission of India & Another: 2014 SCC OnLine CCI 74.
[13] Thomas Cook (India) Ltd. v. MakeMyTrip (India) Pvt. Ltd.: Case No. 52 of 2012

The article also includes case laws and regulatory decisions on the definition of relevant market in banking and financial services sector in India.

As a result of this theoretical and empirical review of literature, this research aspires to deliver a complex and pinpoint comprehension of the given research topic. The information produced in this research may help enrich the discussion on competition law enforcement and policy making in the Indian context, particularly to the banking and financial services industry.

CONCLUSION

The identification of relevant markets within the banking and financial services sector is not an easy task as it requires a complex and sensitive approach. Although these standard elements of market definition are still valid, it can be seen that the emergence of new types of competitors and the changing competitive environment dictates the use of dynamic perception by competition authorities. This means economising it, accounting for technological advancements, network externalities, and geographic constrains of India. When relevant markets are defined well, it helps the competition authorities to fulfil their role of protecting the consumers' interest, encourage competition, and strengthen the financial sector.

SUGGESTIONS

- Embrace a Dynamic Approach: Market definition in the financial sector should be an ongoing process where markets are continually being refined in response to technological and regulatory environments and customer preferences.

- Leverage Economic Analysis: Employ economic tools and data to enhance the existing literature on market definitions, which will help to build a better understanding of competition.

- Consider Network Effects and Data: Understand the importance of micro level factors including network effects and data driven business models that underpin market definitions and competitive boundaries.

- Harmonize with Global Practices: Work towards improving alignment of methods used for defining markets with global norms but at the same time being aware of application in Indian context.

- Invest in Capacity Building: Strengthen the efficiency of competition authorities to analyse markets more critically and respond to the rapid development of financial services.