ABUSE OF DOMINANCE - THE GOOGLE MEET CASE

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ABSTRACT

This study explores the *"Google Meet"* case, investigating claims of Google's anticompetitive actions and their effects on the technology industry. It examines the potential abuse of power that Google's conduct may have on rivals and customers in accordance with "Section 4 of the Competition Act of 2002"[1]. The article also covers a recent decision made by the Competition Commission of India ("CCI") on January 29, 2021, in ***"Baglekar Akash Kumar v. Google LLC."***[2] The panel of three judges of the CCI determined that the combination of the video conferencing app "Google Meet" and Google Mail (G-Mail) does not constitute an abuse of a dominant position. It also examines how this case complies with US and EU competition rules, emphasising the case-by-case methodology Indian courts have used to resolve similar problems and look for viable remedies.

[1] "Section 4 of Competition Act,2002"
[2] "125 taxmann.com 370 (CCI)"

Literature Review

One important idea in competition law is "abuse of dominance," which describes when a business abuses its dominating position in a market to the harm of rivals, customers, and the competitive process itself. This is an overview of the literature on the subject with an emphasis on the Google Meet Case, featuring pertinent papers, legal journals, and writers:

"Abuse of Dominance under EU and US Antitrust Law" by "William Kovacic"

This article offers a thorough analysis of how US antitrust law and European Union competition law handle abuse of power. It examines the current advancements in case law as well as the guiding principles of both nations' legal systems.

"The Google Antitrust Investigations: A Comparative Analysis" by "Fiona Scott Morton" ("Yale Journal on Regulation, 2020")

This journal article explores Google's antitrust investigations, particularly problems arising from its dominant position in search engines. It provides a comparison of the strategies used by US and EU authorities to deal with Google's purported misuse of power.

"Abuse of Dominance in the Digital Economy: Recent Developments" by "Ariel Ezrachi" and "Maurice Stucke"

The difficulties of dealing with abuse of dominance in the digital economy, where tech behemoths like Google have considerable market power, are covered in this article. It examines current events and situations, highlighting the necessity of modern regulatory structures.

"Digital Platforms and Antitrust: An Overview of Leading Cases" by "Eleanor M. Fox" ("Columbia Journal of European Law, 2019")

An summary of significant antitrust lawsuits involving digital platforms such as Google may be found in this legal magazine. It discusses a number of topics related to abuse of dominance, such as definitions of markets, exclusionary practises, and the use of data in antitrust investigations.

"Google: An Interminable Friction of Abuse of Dominance - A Comparative Study between the EU And India by Krusha Bhatt"

The research looks at Google's actions and possible antitrust infractions in the digital markets of Europe and India. It highlights how, in order to properly handle the competitive problems given by digital platforms like Google, which are gaining more and more attention globally,

market scope must be redefined and ex ante restrictions must be put in place.

"Deconstructing the Google Meet Case under Competition Law by Tushar Chitlangia and Nikshetaa Jain"

The paper's goal is to critically examine the Google Meet (G-Meet) case in light of Indian competition law, with a particular emphasis on the idea of tying and its ramifications. This article examines the potential effects of the Competition Commission of India's decision to deviate from the traditional test of tying on consumer choice and competition in the digital market. It also highlights how crucial it is to stop anti-competitive behaviour in order to safeguard consumer freedom and the competitive environment.

"Abuse of dominance: An analysis of CCI order in Google case by Aneesh Raj & Chirantan Kashyap"

The ruling against Google for abusing its dominance in the market for smartphone operating systems is discussed in the report by the Competition Commission of India. It summarises Google's defences, the Director General's office's inquiry, and the accusations made against the company. The study comes to the conclusion that Google exploited its market dominance to restrict consumer choice and profit from it. In light of this, the CCI's ruling is viewed as a step in the right direction towards protecting online freedom.

Background

Google LLC owns "Google Digital Services" as a subsidiary. The source claimed that because G-Mail is a feature of practically all laptops and mobile phones, it has a "dominant position" in the "e-mailing and direct messaging market". According to the informant, Google is a market leader in "internet-related services and products", and the company's decision to integrate Google Meet, a video conferencing tool, with G-Mail represents an attempt to leverage its "dominant position" in one market to penetrate another that is comparable[3]. A violation of "Section 4(2)(e) of the Competition Act" has occurred here. In the current case, the CCI issued an order requesting a response to the accusations made by the opposing parties.

Issues

The question on the table for the CCI was how well Google is a dominant player in the internet-related services and products and if Google's combining "Google-Meet" with G-Mail constitutes an abuse of Google's "dominant position", i.e., using its dominant position in one

[3] "Deconstructing the Google Meet Case under Competition Law by Tushar Chitlangia and Nikshet"

relevant market (dominant in relevant markets for "internet-related services and products") to enter another relevant market in accordance with "Section 4(2)(e)". [4]Making decisions about the Informant's status and the extent to which the general public may report any instances of anti-competitive activity under the Act's provisions were among the other tasks placed before the CCI.

Findings

The CCI concluded that Google had not violated any of the terms of "Section 4 of the Competition Act" after reviewing the opposing arguments made by the parties. It noted and came to the conclusion that none of the pertinent markets is suitable for examining the claims and disputes involving the parties in the current lawsuit. Consequently, Google's exploitation of its dominating position cannot be used against it.

Description of Proceedings

In addressing the question of where a stranger may begin proceedings alleging anti-competitive behaviour, the CCI cited the ruling in ***"Samir Agrawal v. Competition Commission of India"***,[5] wherein the "Supreme Court of India" held that "the doors of approaching the CCI and the appellate authority, i.e., the NCLAT, must be kept wide open in public interest, so as to subserve the high public purpose of the Act," when the CCI performs inquisitorial rather than adjudicatory functions. As a result, the CCI dismissed Google's argument that questioned the informant's location of action by ruling that the opposing party's argument lacked validity. It doesn't take into account that the CCI's actions are inquiry-based and in rem in character, and that anybody can report anti-competitive activity to the CCI by registering an information as per the rules set forth in the Act.[6]

Critical Analysis

The CCI dismissed the informant's complaint in the current instance, which alleged that Google had abused its "dominant position" by integrating the "Google Meet" App into its Gmail App. The CCI depended on its ruling. The case of ***"Re: Harshita Chawla And WhatsApp Inc"*** ("WhatsApp Case") [7]highlights the possibility of segmenting consumer communications services according to distinct criteria. For instance, certain apps facilitate real-time

[4] "Abuse of dominance: An analysis of CCI order in Google case by Aneesh Raj & Chirantan Kashyap Jain"
[5] "1 MLJ 364 (SC)"
[6] "Abuse of Dominance in the Digital Economy: Recent Developments" by "Ariel Ezrachi" and "Maurice Stucke"
[7] "[2020] 118 taxmann.com 421/161 SCL 131 (CCI)"

communication in multiple ways, like "voice and multimedia messaging, video chat, group chat, voice calls, location sharing," etc., while others offer services such as exchanging posts and status updates with an increasing number of people in an impersonal environment. The CCI observed that email services, such as Gmail, are mostly utilised for professional interactions, whereas direct messaging services, such as WhatsApp, are used for more casual and intimate conversations. Email services have been shown to have no network effects, enabling users to interact across different email systems, however direct messaging services, such as WhatsApp, have greater limitations in this area.[8] The CCI concluded that the "market for providing email services" should be the main relevant market in light of these disparities. Google claimed that "Google Meet" should be contrasted with the video conference features provided by WhatsApp and other comparable applications; however, the CCI determined that this comparison was unsatisfactory because of the disparities in size and features, including screen sharing. Instead, it recommended that "Google Meet" be contrasted with niche video conferencing providers such as "Microsoft Teams", "Zoom", and "Skype" in order to build the secondary relevant product market based on features.

Since the competition was uniform, the CCI took into account the whole country of India for the geographic market. Therefore, "the market for providing email services in India" and "the market for providing specialised video conferencing services in India", were identified as the pertinent markets for the investigation.

Notably, the CCI came to the brief conclusion that, despite the fact that the Gmail app now features the Meet feature, users are not compelled to utilise it in order to hold meetings. Users are free to choose to utilise the Meet app at their own discretion, to the degree that they can use any other software developed by another company or google for video conferences. As a result, there isn't any competitor foreclosure in the market. To further support its ruling, the CCI said unequivocally that "the user need not be a Gmail user in order to create a Google account."[9] To create a Google account, he or she can utilise an email address created on any other site. Consequently, "Google Meet" may also be downloaded outside of the Gmail ecosystem. This line of reasoning helped the CCI reach its conclusion that Google's actions do not violate "Section 4(2)(e) of the Act".

[8] "The Google Antitrust Investigations: A Comparative Analysis" by "Fiona Scott Morton" ("Yale Journal on Regulation, 2020")
[9] "Digital Platforms and Antitrust: An Overview of Leading Cases" by "Eleanor M. Fox" ("Columbia Journal of European Law, 2019")

Addressing the Gap: The Limitations of "Section 4" in the Indian Legal Framework

"Section 4 of the Competition Act of 2002" governs anti-competitive activity in Indian jurisprudence instead of abuse of "dominant position". The misuse of a "dominant position" is forbidden by "Section 4", while "dominance per se" is not. Simply put, "dominance per se" refers to an enterprise's entitlement to maintain a dominant position in the market, even via engaging in anti-competitive behaviour. This misconception forces one to briefly mention "Section 2 of the US Sherman Act"[10], which forbids "monopolisation" as well as "attempts to monopolise" in marketplaces. Therefore, it is OK to be dominating in the Indian setting, but it is unacceptable to misuse one's position of dominance.[11]

In addition, Section 4 covers a number of actions that are comparable to those covered by "Article 82 of the European Competition Treaty (EC)"[12]*, including finalising contracts, limiting or restricting, and imposing discriminatory restrictions. There are noticeable distinctions, though. In contrast to Indian law, which does not need evidence of a "appreciable adverse effect on competition" ("AAEC"), "Section 3(1)"* [13]*of the Act explicitly regulates the AAEC test. All things considered, Section 4 does not need the evidence of AAEC, unless there are circumstances falling under "Section 4(2)(c) or (e)".*

There may be a mismatch between this distinction and European legislation. For example, the European Community's "Article 82(2)(c)" clearly stipulates that discriminatory pricing must result in an anti-competitive effect that hurts other enterprises' ability to compete. Without this prerequisite, "Section 4 of the Indian Act" would classify even moderate instances of pricing discrimination as oppressive in and of themselves. Furthermore, discriminatory and predatory pricing may be explicitly defended as "meeting competition" under "Section 4 of the Indian Act". This is not the case with EC law, which has rejected this kind of defence for "predatory pricing", as demonstrated by the ***"France Telecom v. Commission case"***[14]***.***

Conclusion

To Sum it up , we can see that with relation to anticompetitive behaviour and the misuse of dominant position in the technology industry, the "Google Meet case" presented a major legal problem. In the end, the CCI decided that Google's merging of "Google Meet" with Gmail does

[10] "Section 2 of U.S Sherman Act"
[11] "Abuse of Dominance under EU and US Antitrust Law" by "William Kovacic"
[12] "Article 82 of European Competition Treaty"
[13]"Section 3 of Competition Act,2002"
[14] "T-340/03 [2007] ECR II-107"

not violate “Section 4(2)(e) of the Competition Act, 2002” by way of “abuse of dominance”. This choice was made after a thorough examination of the many markets for specialised video conferencing services and email services, taking into account the various features and customer preferences in each. While the case demonstrated the CCI's willingness to consider individual concerns, it also revealed some shortcomings in India's framework for competition law, most notably the emphasis on abusive behaviour as opposed to “dominance per se” and the lack of a requirement for an “appreciable adverse effect on competition” in “Section 4”, which may cause it to deviate from international competition laws. In summary, the “Google Meet” case highlights the constantly changing landscape of competition law in the technology industry and the necessity of continuous modifications to tackle antitrust issues in the digital age. This provides significant perspectives for legal professionals, academics, and competition authorities worldwide.

References

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Sections Referred

"Section 4 of Competition Act of India,2002"

"Section 2 of U.S Sherman Act"

"Section 3 of Indian Competition Act,2002"

"Article 82 of European Competition Treaty"