
CRITICAL ANALYSIS OF THE SUSTAINABILITY OF COMPETITION AUTHORITIES IN DEALING WITH ANTI- COMPETITIVE PRACTICES IN DIGITAL MARKETING

Shrijal Bharti, University of Petroleum and Energy Studies

ABSTRACT

The abstract for the critical examination of competition authorities' sustainability in dealing with anti-competitive behaviours in digital marketing focuses on the issues that antitrust authorities confront when recognising and investigating anti-competitive behaviour in digital marketplaces. The literature study emphasises the need for new tools, competences, and techniques to deal with complicated business models, data dependency, and zero-price marketplaces in the digital industry. Because digital enterprises operate on a global scale, it emphasises the significance of coordination among regulators and policymakers worldwide. Finally, a critical review of competition authorities' sustainability must take into account the requirement for an ex-ante regulatory mechanism for digital markets in the form of distinct laws. This mechanism should maintain competition in digital marketplaces, eliminate anticompetitive behaviour, and foster a fair, transparent, and contestable digital environment. The report also discusses key findings from various competition authorities, such as their efforts to investigate, understand, and remedy anti-competitive behaviour in digital markets, as well as the importance of legislative and regulatory reforms to effectively address competition concerns in the digital realm.

Keywords: Competition authorities, Anti – competitive practices, Digital – marketing, Sustainability, Antitrust

INTRODUCTION

The ability of competition authorities to deal with anti-competitive actions in digital marketing is a major subject that has received substantial attention in recent years¹. Competition authorities play an important role in promoting sustainable development by guaranteeing that enterprises may collaborate to combat climate change and contribute to its solutions². However, antitrust regulation has to be amended to offer a more transparent and assured environment for enterprises to pursue sustainability objectives jointly, and to pragmatically analyse cooperation where the parties can establish that the principal motive is to achieve a sustainability goal.

The European Commission has distributed draft direction on sustainability arrangements, which examines the substance of the draft Rules and the specific points where neighbourhood Rivalry Specialists take a more liberal approach. The UK's new digital Markets, Rivalry and Shoppers Bill expects to direct computerized showcases and safeguard customers, demonstrating a developing acknowledgment of the requirement for explicit guidelines to address the difficulties of digital markets³. In India, a Board of trustees on digital Contest Regulation was set up to look at the requirement for an ex-risk administrative system for computerized markets. The Board of trustees noticed the requirement for reinforcing the powers of the Opposition Commission of India (CCI), arrangement of well-informed authorities at the CCI, and assignment of huge advanced endeavours as watchmen with explicit commitments to guarantee that they don't enjoy hostile to serious practices⁴. The Report of the Council on Digital Competition Regulation underscores the requirement for a strong administration structure to help an efficient development of the digital biological system and address likely enemy of cutthroat damage. The Board of trustees noticed that specific portrayals were gotten ensuing to the finish of partners' counsels with a solicitation to give contributions to the Panel on the requirement for an ex-risk rivalry system for huge computerized ventures. The Panel has observed such portrayals and felt that the Report might be put in open area, welcoming remarks from all partners in the soul of participatory governance⁴. All in all, the maintainability of contest experts in managing hostile to cutthroat practices in digital

¹ <https://www2.deloitte.com/nl/nl/pages/sustainability/articles/the-european-commissionpublishes-draft-guidance-on-sustainability-agreements.html>

² <https://iccwbo.org/news-publications/policies-reports/how-competition-policy-acts-as-a-barrierto-climate-action/>

³ <https://www.addleshawgoddard.com/en/insights/insights-briefings/2023/competition/uk-newdigital-markets-competition-consumer-bill-in-five-minutes/>

⁴ <https://www.mca.gov.in/bin/dms/getdocument?mds=gzGtvSkE3zIVhAuBe2pbow%253D%253D&ty pe=open>

showcasing requires a complete arrangement of strategies and guidelines that cover all areas of the economy. Rivalry specialists and legislators should empower business coordinated effort and diminish the chilling impact on organizations chasing after supportability objectives mutually and has distributed draft direction on manageability. The developing acknowledgment of the requirement for explicit guidelines to address the difficulties of computerized markets is obvious in the drives taken by the European Commission, the UK, and India. Nonetheless, a more straightforward and certain climate for organizations to seek after supportability objectives mutually is required, and rivalry specialists should evaluate collaborations logically when the gatherings can show that the primary goal is arriving at a maintainability objective⁵.

How do competition authorities define anticompetitive activities in digital marketing?

Anti-competitive tactics in digital marketing are defined by competition authorities as behaviours that limit competition, reduce customer choice, and stifle innovation. These tactics can take many forms, including predatory pricing, cartels, mergers, price discrimination, and price fixing agreements. Predatory pricing happens when a corporation deliberately sets prices lower than cost in order to force competitors out of the market, whereas cartels are alliances of independent enterprises or nations created to govern the production, pricing, and marketing of goods or services. Mergers that lessen competition in a given market may be considered anticompetitive and subject to regulatory examination. Price discrimination is when a vendor charges different prices to different customers for the same product or service, whereas price fixing is an agreement amongst rivals to set a fixed price for their products or services⁶. Anti-competitive tactics can be more damaging in digital marketplaces due to network effects and economies of scale, which might result in a "winner-takes-most" conclusion. The Indian Committee on Digital Competition Law, for example, highlighted ten prevalent anticompetitive measures used by Big Tech, such as data use limitations, adjacency/bundling and tying, and anti-steering requirements. These methods can lead to pricing imbalance, less competition, and the ability for dominant businesses to transfer their market power from one primary platform to another. To address these issues, competition authorities may need to implement ex-ante regulatory frameworks to prevent irreversible harm to impacted parties in digital marketplaces. The Competition Act, 2002 in India, for example, is ex post, which means

⁵ <https://www.mdpi.com/2071-1050/14/24/16356>

⁶ <https://www.obhanandassociates.com/blog/anti-competitive-practices-in-digital-markets-by-bigtech-under-government-scanner/>

that corporations are penalised for anti-competitive behaviour after the incidence of the practice/harm. The Committee on Digital Competition Law proposed that ex-ante measures be implemented in digital marketplaces, notably for Big Tech corporations⁷. The Committee also recommended the creation of a specialised digital markets unit within the Competition Commission of India to monitor established and emerging Systematically Important Digital Intermediaries (SIDIs), make recommendations to the central government on SIDI designation, review compliance, and adjudicate on digital market cases.

Some examples of anti-competitive practices in digital marketing:

1. Acquisitions and Mergers: Enormous firms participating in "executioner acquisitions," where they purchase exceptionally esteemed new businesses without the exchange being dependent upon consolidation control rules, can impede rivalry in computerized markets⁸.
2. Information Use Limitations: Organizations confining the establishment and use of outsider applications, for example, keeping clients from using administrations of utilizations other than their own, can restrict shopper decision and competition.
3. Contiguonsness/Packaging and Tying: Computerized firms packaging centre or fundamental administrations with correlative contributions, driving clients to purchase related administrations, can make obstructions to passage for contenders and lessen rivalry in the market.
4. Hostile to directing Arrangements: Substances utilizing against controlling arrangements to keep business clients from moving out of their foundation, such as commanding the utilization of their own installments frameworks for application buys, can smother decision and lead to hostile to cutthroat exclusionary practices.
5. Stage Lack of bias/Self-preferencing: Organizations inclining toward their own administrations on their foundation, making an irreconcilable circumstance, can adversely influence downstream business sectors and thwart fair competition.

⁷ <https://www.accc.gov.au/business/competition-and-exemptions/competition-and-anticompetitive-behaviour>

⁸ <https://www.mondaq.com/india/corporate-and-company-law/1270512/anti-competitive-practices-in-digitalmarkets-by-big-tech-under-government-scanner>

6. Confining Outsider Applications: Restricting clients from getting to or using outsider applications can limit rivalry and advancement in computerized markets. These practices, among others, can hurt rivalry, limit purchaser decision, and make boundaries for new participants in the computerized showcasing scene⁹.

Consequences of participating in anti-competitive behaviour in digital marketing

The outcomes of taking part in anti- competitive practices in digital showcasing can be serious for the both organizations and customers. Hostile to anti-competitive practices can prompt a lessening in rivalry, which can bring about greater costs, decreased development, and less decisions for buyers. Now and again, hostile to serious practices might prompt the breakdown of more modest organizations that can't contend with bigger, predominant players in the market. In expansion to these adverse consequences on customers and organizations, taking part in enemy of cutthroat practices can likewise bring about legitimate outcomes. Contest specialists all over the planet have the ability to force critical fines on organizations that participate in enemy of serious practices¹⁰. For instance, in the European Association, organizations found to have taken part in enemy of serious practices can be fined up to 10% of their worldwide income. In the US, the most extreme fine for disregarding antitrust regulations is \$100 million. In expansion to fines, organizations found to have taken part in enemy of serious practices can likewise confront lawful activity from buyers and different organizations. Consumers and organizations can sue for harms brought about by hostile to serious practices, and organizations found to have taken part in enemy of anti-competitive practices can likewise be prohibited from partaking in specific business sectors or participating in specific business practices. Furthermore, taking part in enemy of serious practices can likewise harm a business' standing, making it harder to draw in clients and accomplices later on. This can prompt a deficiency of piece of the pie and income, and can eventually bring about the disappointment of the business¹¹. In outline, taking part in enemy of cutthroat practices in digital promoting can have serious ramifications for the two organizations and shoppers. These results can incorporate lawful punishments, harm to a business' standing, and a deficiency of portion of

⁹ <https://www.cnbtv18.com/technology/explained--indias-upcoming-digital-competition-act-and-what-is-the-debate-around-it-all-about-17222501.htm>

¹⁰ <https://competitionandmarkets.blog.gov.uk/2020/03/02/5-consequences-of-breaking-competition-law/> ¹¹ <https://www.mondaq.com/india/corporate-and-company-law/1270512/anti-competitive-practices-in-digital-markets-by-big-tech-under-government-scanner>

the overall industry and income. To keep away from these outcomes, organizations ought to guarantee that they are following all appropriate contest regulations and guidelines¹¹.

How do competition authorities decide that a corporation has engaged in anti-competitive practices in digital marketing?

Competition authorities decide if an organization has participated in anti-competitive practices in digital promoting through different techniques, including:

1. Examinations: Rivalry specialists can direct examinations concerning thought enemy of serious practices. These examinations can be set off by objections from contenders, buyers, or different partners, or they can be started by the opposition authority itself.
2. Market studies: Rivalry specialists can likewise direct market studies to evaluate the cutthroat elements of a specific area or market. These investigations can assist with recognizing likely enemy of cutthroat practices and give bits of knowledge into how rivalry can be gotten to the next level.
3. Set of rules: Contest specialists can lay out a set of principles to supplement antitrust requirement with a more clear and all the more handily applied set of guidelines that characterize the limits of hostile to cutthroat lead in computerized markets. This can give all organizations, including the huge stages, clearness on the guidelines, instead of depending on antitrust decisions that can be difficult to apply past the points of interest of a singular case.
4. Favourable to contest rules and systems: Competition authorities can utilize supportive of competition rules and structures to open up open doors for contest, convey a market-drove approach, and work in contest forthright. This can assist with keeping hostile to serious practices from happening in any case and guarantee a fair, straightforward, and contestable computerized biological system.
5. Ex-risk arrangements: Rivalry specialists can present ex-bet arrangements for advanced markets and especially for efficiently significant computerized mediators (SIDs) to guarantee fair contest in computerized markets. SIDs ought to be ordered in light of their income, market capitalisation, and the quantity of dynamic business and end clients, and ought to be expected

¹¹ <https://www.mca.gov.in/bin/dms/getdocument?mds=gzGtvSkE3zIVhAuBe2pbow%253D%253D&type=open>

to present a yearly report to the opposition authority enumerating the actions taken to conform to obligatory commitments.

6. Sanctions: Contest specialists can force sanctions on organizations found to have taken part in enemy of cutthroat practices. These assents can incorporate fines, exclusion from going about as an organization chief, pursuit for harms, and reputational harm¹².

In deciding if an organization has taken part in enemy of serious practices, competition authorities will consider factors, for example, the piece of the pie of the organization, the anticompetition elements of the market, and the effect of the organization's practices on competition and customers, and any expected obstructions to section or extension for¹³ contenders. They will likewise think about the particular qualities of advanced markets, for example, network impacts, information driven plans of action, and the job of stages in molding market elements.

How do anti-competitive actions in digital marketing impact consumers?

Anti-competitive behaviours in digital marketing can have a big impact on consumers. These behaviours can result in increased pricing, fewer options, less innovation, a lack of transparency, and unjust treatment of customers. Here are some concrete ways in which anticompetitive actions in digital marketing damage consumers depending on the sources provided:

1. Dominant corporations in the digital marketing industry can dictate pricing, resulting in increased advertising costs and restricted choices. This might have an impact on firms who use digital marketing to reach their target demographic. Furthermore, restricted competition implies that consumers have fewer choices in terms of providers and services, restricting their ability to identify the most cost-effective and appropriate solutions.

2. Diminished advancement: Imposing business model power in the computerized promoting industry can smother contest, prompting decreased development and less open doors for new participants. At the point when prevailing players control a critical portion of

¹² <https://www.obhanandassociates.com/blog/anti-competitive-practices-in-digital-markets-by-big-techunder-government-scanner/>

¹³ https://loksabhadocs.nic.in/lsscommittee/Finance/17_Finance_53.pdf

the market, there is less motivator for organizations to put resources into innovative work or think of new and savvy fixes. This can at last block progressions in advanced advertising innovations and strategies.

3. Absence of straightforwardness and decency: Monopolistic practices can bring about an absence of straightforwardness and reasonableness in the computerized showcasing industry. Predominant players might participate in biased evaluating or unreasonable strategic approaches to keep up with their market position. This absence of straightforwardness and reasonableness can hurt shoppers by restricting their decisions and possibly prompting higher prices. Anti-competitive behaviours in digital marketing can hurt customers by resulting in higher pricing, fewer options, less innovation, a lack of transparency, and unjust treatment. These tactics can create hurdles for new entrants, limit customer alternatives, and eventually damage the entire consumer experience in the digital marketing landscape.

Some potential implications for customers impacted by anti-competitive behaviour in digital marketing

Consumers impacted by anti-competitive actions in digital marketing may face the following consequences:

1. Anti-competitive behaviours in the digital marketing business might lead to increased pricing for consumers. This might result in higher expenses for customers and decreased affordability of products and services.
2. Limited choice: Anti-competitive conduct by dominant market firms can limit customer access to alternative products or services. This lack of alternatives might limit consumers' ability to identify the best offers or products.
3. Monopoly dominance and anti-competitive behaviour can limit innovation in the digital marketing business. When dominant businesses hold a sizable portion of the market, companies have less motivation to spend in R&D or come up with novel and creative ideas. This lack of innovation may limit the availability of new products or services to consumers.
4. Anti-competitive activities can undermine transparency and fairness in the digital marketing business. Dominant players may use discriminatory pricing or unjust

commercial tactics to preserve their market dominance. This lack of openness and fairness can hurt customers by restricting their options and potentially driving up prices.

How do customers recognise anti-competitive activities in digital marketing?

Hostile to anti-competitive practices in advanced promoting can take different structures, like acquisitions and mergers, stage lack of bias/self-preferencing, information utilization, evaluating/profound limiting, select tie-ups, search and positioning preferencing, confining outsider applications, and publicizing arrangements. To recognize these practices, shoppers can search for signs, for example,

1. Restricted decision: On the off chance that a computerized showcasing stage or administration has a predominant market position and offers restricted choices to buyers, it could be participating in enemy of cutthroat practices.
2. Exorbitant costs: In the event that a computerized promoting stage or administration charges essentially more exorbitant costs than its rivals without a reasonable legitimization, it very well might be participating in enemy of serious practices¹⁴.
3. Information abuse: On the off chance that a computerized showcasing stage or administration abuses client information for following and profiling end clients, it very well might be taking part in enemy of serious practices.
4. Self-preferencing: On the off chance that a computerized promoting stage or administration leans toward its own administrations or items over those of its rivals, it could be participating in enemy of cutthroat practices.
5. Selective tie-ups: On the off chance that a computerized promoting stage or administration goes into elite concurrences with business clients or dealers, it could be taking part in enemy of serious practices.
6. Search and positioning preferencing: In the event that a computerized promoting stage or administration controls search rankings to lean toward its own items or administrations, it very well might be taking part in enemy of serious practices.

¹⁴ https://loksabhadocs.nic.in/lsscommittee/Finance/17_Finance_53.pdf

7. Confining outsider applications: In the event that a computerized showcasing stage or administration limits clients from getting to or using outsider applications, it very well might be participating in enemy of cutthroat practices¹⁵.

8. Promoting strategies: On the off chance that a computerized showcasing stage or administration takes part in biased evaluating or unreasonable strategic policies in its publicizing arrangements, it could be participating in enemy of serious practices. Shoppers can safeguard themselves from these practices by remaining informed about the computerized advertising scene, understanding agreements cautiously, detailing worries to administrative specialists, and supporting favourable to serious approaches and guidelines.

Regulatory bodies that oversee anti-competitive practices in digital marketing

Some regulatory agencies that supervise anti-competitive actions in digital marketing are:

1. The Competition Commission of India (CCI) enforces competition laws and promotes fair competition in the market. It looks into anti-competitive behaviours such as abuse of dominance and anti-competitive agreements to safeguard consumer interests and foster competition in digital markets¹⁷.
2. The Federal Trade Commission (FTC) in the US is responsible for prohibiting unfair corporate practices that undermine competition and consumer welfare. It enforces antitrust laws to prevent anti-competitive behaviour and safeguard consumers in the digital marketing landscape.
3. India seeks for a regulatory entity to regulate e-commerce and prevent anti-competitive tactics in digital marketing. This regulatory organisation would oversee e-commerce operations, promote fair competition, and safeguard consumers' interests.

These regulatory agencies play an important role in monitoring and correcting anti-competitive actions in digital marketing to maintain fair competition, safeguard consumer rights, and create a level playing field for enterprises in the market.

¹⁵ <https://www.mca.gov.in/bin/dms/getdocument?mds=gzGtvSkE3zIVhAuBe2pbow%253D%253D&type=open>

How do antitrust laws and regulations protect fair competition in digital marketing?

Antitrust laws and regulations ensure fair competition in digital marketing by prohibiting the misuse of market power and encouraging fair competition. These restrictions prevent unfair commercial practices that limit competition and undermine consumer welfare. Antitrust laws, often known as competition or antimonopoly laws, are intended to prohibit and limit behaviours that stifle competition and undermine consumer welfare. In the digital marketing landscape, these approaches are critical in reducing monopolistic power and fostering a healthy competitive environment. Antitrust remedies can take several forms, including imposing penalties, demanding divestitures, and even breaking up monopolistic corporations. Antitrust laws are enforced by regulatory authorities as the Competition Commission of India (CCI), the Federal Trade Commission (FTC), and the European Commission's Directorate-General for Competition and regulations in digital marketing. These organisations examine anticompetitive behaviour, levy fines and penalties, and file legal action against firms that break antitrust laws. Antitrust laws can impact e-Commerce and marketing in a variety of ways. They can, for example, control recommendation algorithms for websites like Google and Amazon, prohibit monopolisation of auxiliary gear like as chargers and cables, and require firms to adhere to universal hardware and software standards. Antitrust rules can also have an impact on how corporations sell, purchase, and organise apps in their separate stores, as well as restrict data gathering activities. In conclusion, antitrust rules and regulations are critical for fostering fair competition in digital marketing. They contribute to preventing monopolistic activities, protecting consumer welfare, and ensuring that enterprises function in a fair and competitive environment.

How can organisations assure compliance with the antitrust rules in digital marketing?

Companies can assure compliance with antitrust rules in digital marketing by applying the measures below:

1. Implement a complete antitrust compliance programme, including policies, processes, and training, to ensure staff understand and follow antitrust laws and regulations.
2. Regular Training: Educate staff at all levels on antitrust laws, compliance, and how to report suspected breaches.

3. Regularly monitor and audit corporate activities for compliance with antitrust laws. This involves an examination of contracts, pricing tactics, marketing methods, and dealings with rivals.
4. Seek Legal Advice: Companies should engage with antitrust law experts to guarantee compliance and advice on difficult matters.
5. Implement clear policies. Establish explicit policies and standards for dealing with rivals, pricing tactics, market allocation, and other activities that may pose antitrust issues.
6. Establish a Compliance Culture: Promote ethical behaviour, transparency, and adherence to antitrust rules inside the organisation.
7. Continually monitor antitrust laws, regulations, and enforcement trends to maintain compliance with current standards.

By applying these measures, businesses may reduce the risk of antitrust breaches in digital marketing while also demonstrating a commitment to fair competition and ethical business practices.

What are some ways that corporations might avoid anti-competitive behaviours in digital marketing?

Companies can take a number of actions to avoid anti-competitive digital marketing tactics. First, they can implement a pro-competition strategy that establishes laws and standards to alter the functioning of a digital market and open up new avenues for competition, innovation, and consumer choice. This may be accomplished through a pro-competition strategy that encourages new and creative enterprises to enter and compete in digital markets. Second, businesses can agree and establish a code of conduct to supplement antitrust enforcement with a clearer and more readily applicable set of rules that limit the bounds of anticompetitive behaviour in digital marketplaces. Third, businesses may employ strong technologies to provide customers with more effective choices over their digital services, creating new prospects for competition where there are now closed systems¹. Personal data mobility, for example, entails agreeing on common standards to provide customers more control over their personal data, allowing them to select whether it is transferred or shared between the digital platform that now holds it and alternative new services. Fourth, corporations can create a digital

platform code of conduct based on a set of key principles that will apply to digital platforms that have been identified as strategic market participants¹.Fifth, corporations may work with regulators and industry stakeholders to guarantee fair competition in digital markets. This can include creating a regulatory authority for the digital marketing industry, implementing ex-ante provisions for digital markets, particularly for systematically important digital intermediaries (SIDIs), and categorising SIDIs based on revenue, market capitalization, and the number of active business and end users².Finally, businesses may engage in research, analytics, and optimisation to better understand consumer behaviour and adjust marketing activities to fit the requirements and preferences of their target audience, as well as react to changing technologies and trends to preserve a competitive advantage⁴. Businesses may contribute to a robust, transparent, and dynamic digital marketing landscape by encouraging fair competition, consumer protection, and innovation.

What legal steps may consumers use to combat anti-competitive conduct in digital marketing?

If customers believe they have been impacted by anti-competitive conduct in digital marketing, they have many legal options. The Federal Trade Commission (FTC) in the United States, for example, works to halt and prevent unfair corporate activities that decrease competition and result in higher prices, lower quality, or less innovation¹. The FTC primarily investigates anticompetitive activity under Section 5 of the Federal Trade Commission Act, which prohibits "unfair methods of competition" and "unfair or deceptive acts or practices. "In India, a parliamentary panel suggested an ex-ante regulation, classification of "systemically important digital intermediaries" based on their income, market capitalization, and number of users, and a new digital competition legislation to prohibit anti-competitive behaviour in digital marketplaces. The Confederation of All India Traders (CAIT) has also requested that the government quickly implement a strong e-commerce strategy and establish a regulatory institution for the sector. Consumers can also seek legal counsel from consumer protection organisations or competition law specialists to better understand their rights and available remedies⁵. They can also join consumer advocacy groups that aim to safeguard consumers' rights and promote fair competition in the digital marketing business. Additionally, consumers may keep updated about their consumer rights and the most recent advances in competition law to better recognise and challenge any possible anti-competitive activities they experience.

What are the challenges that competition authorities confront when dealing with anti-competitive actions in digital marketing?

The issues that competition authorities confront when dealing with anti-competitive actions in digital marketing include the following:

1. Data-driven business models. Firms engaging in digital markets frequently rely on data and may use zero-price marketplaces, making it difficult for courts and authorities to use traditional frameworks such as market definition. Authorities may require new tools, capacities, and tactics to examine and comprehend anti-competitive behaviour in digital marketplaces due to the quantity and importance of data, the difficulty in understanding how algorithms work, and other difficulties.
2. Market power and network effects: In digital marketplaces, network effects and switching costs might favour a few dominant businesses, leading to enormous market dominance. Anticompetitive behaviour may occur when dominant players leverage network effects to diminish competition, for example, using exclusivity clauses that restrict merchants from engaging with competing platforms, or when dominant positions are used to unfairly undermine competition and consumer choice, such as through algorithm modification, vertical integration, or performing 'killer acquisitions'.
3. The global nature of digital firms necessitates collaboration among regulators and policymakers across disciplines and jurisdictions to address issues such as data protection, consumer protection, and media sustainability.
4. Regulatory challenges: Competition authorities must recognise market dominance and anticompetitive behaviour in digital marketplaces, which standard evaluation methods may overlook. In an analogue environment, the old definition of market power was percentage market share or, more particularly, the amount to which a business exercised considerable market power, which meant that changing its own pricing might considerably impact the prices, sales, or revenues of others.

Recent Cases related to Anti-competitive Practices in digital marketing

- Big IT businesses engage in anti-competitive behaviours. On December 22, 2022, India's Standing Committee on Finance issued a report on 'Anti-Competitive Practices

by Big Tech Companies'. The paper addresses ten key anti-competitive actions by Big Tech corporations and presents the Committee's opinions on the necessity for ex-ante measures and systemically important digital intermediaries (SIDIs) to promote fair competition in digital marketplaces.

- In a 2019 report, the Digital Competition Expert Panel in the UK emphasised the challenges of effective competition in digital markets. The report recommends establishing a new digital markets unit with the necessary capabilities and resources, as well as new powers to set and enforce competition-enhancing rules.
- The Committee on Digital Competition Law in India identified ten anti-competitive practices (ACPs) used by major digital firms to strengthen their dominance in digital marketplaces. These include anti-steering clauses, platform neutrality/selfpreferencing, adjacency/bundling and tying, data usage (use of non-public data), pricing/deep discounting, exclusive tie-ups, search and ranking preferencing, thirdparty application restrictions, and advertising policies.
- The Competition Act of 2002 in India aims to address anti-competitive behaviour in digital marketplaces using an ex-post approach. However, the Standing Committee Report underlined the necessity for prompt intervention to avoid anti-competitive behaviour and create a competitive framework for the Indian digital economy.

The Competition Commission of India (CCI) is investigating anti-competitive conduct in digital marketplaces by Big Tech corporations, such as abuse of dominance, data consumption, and restrictions on third-party apps. These instances demonstrate the ongoing problems and efforts to prevent anti-competitive behaviour in digital markets throughout the world.

What are the consequences for corporations found guilty of anticompetitive behaviour in digital marketing?

Companies found guilty of anti-competitive actions in digital marketing may face serious penalties such as fines, prohibition from working as a corporate director, damages, reputational harm, and time spent fighting legal lawsuits. In India, the Standing Committee Report identified ten anti-competitive practices (ACPs) used by large digital enterprises to abuse and consolidate their position in digital markets, such as anti-steering provisions, platform

neutrality/self-preferencing, adjacency/bundling and tying, data usage (use of non-public data), pricing/deep discounting, exclusive tie-ups, search and ranking preferencing, restricting thirdparty applications, and advertising policies. The report recommends that only the first nine ACPs listed above be discussed in this Report, and that anti-competitive mergers and acquisitions be dealt with briefly in this Report because the Competition (Amendment) Act, 2023 adequately addressed the issue by introducing a deal value threshold for transaction notification to the CCI. In the European Union, corporations who engage in anti-competitive behaviour may face fines of up to 10% of their annual worldwide revenue. The UK Competition and Markets Authority (CMA) can sanction corporations that engage in anti-competitive collusion up to 10% of their annual global revenue, and individuals can face personal penalties and even jail sentences. Individuals may also be barred from working as company directors for up to 15 years under the CMA, and firms may be sued for damages even if they avoid penalties or criminal charges. Anti-competitive behaviour can also harm a company's reputation and lead to years of legal battles

CONCLUSION AND SUGGESTIONS

Finally, anti-competitive digital marketing activities can have a major market impact, hurt consumers, and inhibit innovation. These tactics include price fixing, market allocation, bid rigging, monopolisation, and exclusionary behaviour. The Competition Commission of India (CCI), the Federal Trade Commission (FTC), and the European Commission's DirectorateGeneral for Competition are in charge of enforcing antitrust laws and regulations to prevent such practices and promote fair competition in digital marketing. Companies can take several steps to prevent anti-competitive practices in digital marketing, such as establishing a procompetition approach, agreeing and outlining a code of conduct, using powerful tools to give consumers greater effective choice, establishing a digital platform code of conduct, collaborating with regulatory bodies and industry stakeholders, and investing in research, analytics, and optimization. Consumers can also take steps to protect themselves from anticompetitive digital marketing practices, such as learning about their rights, reporting concerns to regulatory authorities, seeking legal counsel, joining consumer advocacy groups, using alternative platforms, and supporting pro-competition policies and regulations. To summarise, combating anti-competitive behaviours in digital marketing necessitates a collective effort among regulators, businesses, and consumers. By supporting fair competition, consumer protection, and innovation, we may contribute to a thriving, transparent, and

dynamic digital marketing scene. Suggestions for combating anti-competitive behaviour in digital marketing include:

1. Creating a regulatory organisation for the digital marketing industry to govern e-commerce, promote fair competition, and safeguard consumer interests.
2. Introducing ex-ante requirements for digital markets, specifically for SIDs, can prevent anticompetitive activities and promote a fair, transparent, and contestable digital environment.
3. Categorising SIDs based on revenue, market capitalization, and number of active users would improve regulatory oversight of anti-competitive digital marketing techniques.
4. Encouraging pro-competition approaches: By establishing norms and standards, corporations may generate new opportunities for competition, innovation, and consumer choice in digital markets.
5. Promoting collaboration among regulatory agencies, corporations, and consumers helps ensure fair competition, safeguard consumer rights, and provide a level playing field for enterprises in the market
6. Investing in research, analytics, and optimisation: Companies can tailor marketing efforts to meet consumer needs and preferences, as well as adapt to emerging technologies and trends to stay competitive.

By putting these proposals into action, we may contribute to the development of a fair, transparent, and dynamic digital marketing ecosystem that promotes competition, innovation, and consumer welfare.