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# IDENTIFICATION OF RELEVANT MARKET IN DIGITAL ECONOMY

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## I. Introduction

The human race has witnessed various revolutions over the centuries. In the twenty-first century, the 'Digital Revolution' is enhancing almost every aspect of our lives.<sup>1</sup> Businesses are going online, hence facilitating more interactions between various users through websites or apps. Digital platforms are becoming ubiquitous and cost-efficient data and devices make it easily available to a large number of users. The Indian government via the Ministry of Electronics Information and Technology (MeitY) is working on its endeavour- "India's Trillion-Dollar Digital Opportunity". It aims to realise the potential of the Indian Digital Economy to reach \$1 trillion by 2025.<sup>2</sup>

As the importance of the digital economy is increasing, the Competition Commission of India (CCI) has been increasing its scrutiny of digital platforms. Digital markets are fraught with network effects, high fixed costs, and almost zero marginal costs. It makes them more vulnerable to being abused by any dominant firm.

Most cases dealt with by CCI against the digital platforms are against the abuse of dominant position by these platforms.<sup>3</sup> It has become important to have a proper legal framework, which deals with effectively regulating the actions causing negative effects on the Indian digital markets.

The first step for inquiring into whether there is abuse of dominance is to determine the relevant market. In this article, the author evaluates the approach adopted by CCI to determine the

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<sup>1</sup> Panagariya, Arvind. "Digital revolution, financial infrastructure and entrepreneurship: The case of India." *Asia and the Global Economy* 2, no. 2 (2022): 100027.

<sup>2</sup> Ministry of Electronics and Information Technology, India's Trillion-Dollar Digital Opportunity, 2-3, [https://www.meity.gov.in/writereaddata/files/india\\_trillion-dollar\\_digital\\_opportunity.pdf](https://www.meity.gov.in/writereaddata/files/india_trillion-dollar_digital_opportunity.pdf).

<sup>3</sup> Sarvesh Mathi, Digital Markets Have Unchecked Dominance, Will Prioritise Scrutiny Of Online Platforms: CCI Chairman, Medianama, July 30, 2021, [medianama.com/2021/07/223-cci-chairman-competition-digitalmarkets](https://medianama.com/2021/07/223-cci-chairman-competition-digitalmarkets)

relevant market.

Identifying the relevant market<sup>4</sup> in the digital space is critical for evaluating a company's actions, identifying competition, and avoiding abuse of dominance. It includes relevant product and geographic markets, with an emphasis on demand-side substitutability.

The relevant product market<sup>5</sup> includes all goods and services that are substitutable based on their nature, utility, or price, with a focus on demand-side substitutability. The relevant geographic market<sup>6</sup>, on the other hand, refers to regions that have similar demand and supply conditions for goods and services, distinguishing them from neighbouring areas.

However, the global reach of digital platforms makes defining their geographic market more difficult. Given the complexity of digital platforms, this article focuses on identifying relevant product markets. It also discusses the CCI's approaches to dealing with these challenges, and it concludes with recommendations for determining relevant product markets in the digital realm.

## II. Determining Relevant Market for Digital Markets

Because of the interdependence among user groups caused by network effects, digital markets are complex. There are two types: direct, where the value of a product grows with more users (e.g., Twitter), and indirect, where the value of one group depends on the value of another (e.g., food delivery platforms). Platform size is important, but dominant players can abuse it.

Indirect network effects make determining the relevant market more difficult. Consider food delivery apps that serve three distinct user groups: restaurants, consumers, and delivery agents. Substitutability varies by group. However, in markets with single transactions, such as credit card companies, substitutability is similar, making it easier to identify a single relevant market.

Therefore, CCI has the challenge of deciding whether a single relevant market is to be defined for the entire digital platform or whether there is a need to determine multiple relevant markets for each side in a single platform.

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<sup>4</sup> The Competition Act, 2002, § 2(r), No. 12, Acts of Parliament, 2003 (India).

<sup>5</sup> The Competition Act, 2002, § 2(t), No. 12, Acts of Parliament, 2003 (India).

<sup>6</sup> The Competition Act, 2002, § 2(s), No. 12, Acts of Parliament, 2003 (India).

## **Analysing the Platform's Typology**

The platform's nature and typology can be considered for determining whether there should be a single or multiple relevant markets. For these, platforms can be divided into two types:

- i) transactional platforms and
- ii) non-transactional platforms.

Transactional platforms have direct transactional from the user groups and there are indirect network effects. For eg, payment systems, food delivery platforms, etc. For this, a single relevant market should be defined.

Non-transactional platforms have interactions not transactions between two user groups. The theory has cross-side network effects. For eg, social media platforms. Consumers are one user group and the other is the advertising companies. For this, different relevant markets should be defined.

Scholars argue that due to bidirectional indirect network effects, transactional platforms in digital markets should treat both sides as a single relevant market. Non-transactional platforms, on the other hand, should treat each side as a separate market due to distinct economic factors and potential substitutes.<sup>7</sup>

## **Determining Substitutability**

As most important step in determining the relevant market is always determining the substitutability of a product. For this, a famous test is the 'Small but Significant Non-Transitory Increase in Price' (SSNIP) test. Where there is a small but significant increase in the prices and is non-transitory. Then it is assessed whether there is such a substitute available for the product, to which consumers may shift due to the price hike.<sup>8</sup>

Nevertheless, the test's major shortcoming in applying it to digital platforms is not taking into

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<sup>7</sup> Lapo Filistrucchi et al, Market Definition in Two-Sided Markets: Theory and Practice, *Journal of Competition Law & Economics*, 10(2), 293–339, doi.org/10.1093/joclec/nhu007

<sup>8</sup> Kaushal Sharma, SSNIP Test: A Useful Tool, Not a Panacea, *Competition Law Reports* (May–June 2011), cci.gov.in/sites/default/files/presentation\_document/SSNIPTestKKSharma260711.pdf

consideration the influence of the indirect network effects on the pricing. That means the SSNIP test would not be able to determine substitutability where the food delivery platform for an increase in commission it charges to the restaurants. As there, the aggrieved restaurant owner cannot make the consumers of the platform switch to another platform. Hence, unable to determine the substitutability of the service offered by the platform.

Hence, the SSNIP test would need to be applied to both sides of the market, which is complicated due to the indirect network effects and insufficient data.

Applying this case to social media platforms, where one user group (advertisers) derives greater value than the other (users) and therefore is charged more. In this scenario, applying the SSNIP test would fail as it is impossible to calculate a percentage increase from a 'zero' price. Therefore, it is CCI should consider other factors such as quality and cost to determine substitutability.

So, from the above analysis, it is clear that indirect network effects must be considered to get accurate results for the substitutability of a product. Under the next subheading, it will be discussed how CCI has been dealing with the issue of determining relevant markets in the digital market.

### **III. Relevant Market in Digital Markets: CCI's Approach**

CCI has the onus to determine relevant markets for dealing with the cases relating to the abuse of dominant position<sup>9</sup> or appreciable adverse effect of a merger or combination on competition.<sup>10</sup> Factors which must be taken into account are mentioned in section 19(7) of the act. It includes products' physical characteristics, nature of services,<sup>11</sup> end-use, price and consumer preferences.<sup>12</sup>

Since the last decade, CCI has dealt with many cases related to digital platforms. Major cases were against the abuse of the dominant position. These digital platforms include e-commerce

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<sup>9</sup> The Competition Act, 2002, § 4, No. 12, Acts of Parliament, 2003 (India).

<sup>10</sup> The Competition Act, 2002, § 6, No. 12, Acts of Parliament, 2003 (India).

<sup>11</sup> The Competition (Amendment) Act, 2023, No. 09, Acts of Parliament, 2023 (India).

<sup>12</sup> The Competition Act, 2002, § 19, No. 12, Acts of Parliament, 2003 (India).

sites, online cab aggregators and hospitality platforms.<sup>13</sup>

Decisions given by CCI in all these cases did not show inconsistency in determining the relevant market for digital platforms and neglected their multi-sided nature. It also neglected the interdependence of user groups and indirect network effects.

In *FHRAI vs. MakeMyTrip and Others*<sup>14</sup>, CCI relied on determining the relevant market based on which side has made the complaint. It considered the hotelier business the relevant market based on the complainant.

This approach is definitely irrelevant when digital platforms are considered for determining relevant markets as it ignores its major competition constraints and multi-faced nature. However, in *Lifestyle Equitas CV vs. Amazon*<sup>15</sup>, the relevant market was the ‘market for e-commerce services facilitating the sale of goods in India through online platforms’. This was a welcoming step as it gave distinguished recognition to online platforms.

The CCI has also studied the nuances of e-commerce and telecom platforms recognising their multi-faced nature and the impact of indirect network effect they have.<sup>16</sup> CCI refrained from applying the SSNIP test due to lack of data needed for defining the substitutability of a product. It relied on the functionality to determine the substitutability.

Providing the facility of WhatsApp Pay in WhatsApp was challenged on the grounds of abuse of the dominant position in *Hashita Chawla vs. WhatsApp*<sup>17</sup>. CCI determined over-the-top messaging apps as the primary relevant market by relying on the major function of the app. In the case of *Meru Travel Solutions vs. Uber India Pvt Systems Ltd*<sup>18</sup>, CCI distinguished between radio taxis and other modes like rickshaws and private taxis, considering factors like time-saving, predictability, and 24/7 availability. Despite differences, it included both radio taxis and yellow cabs in the relevant market, emphasizing consumer behaviour over specific

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<sup>13</sup> Mohit Chawdhry, *Determining the Relevant Market for Digital Multi-Sided Platforms*, Eysa Centre (Dec. 2021), <https://www.esyacentre.org/documents/2021/12/7/determining-the-relevant-market-for-digital-multi-sided-platform>.

<sup>14</sup> 14/2019.

<sup>15</sup> 09/2020.

<sup>16</sup> Competition Commission of India, *Market Studies on E-commerce*, January 8, 2021, [cci.gov.in/sites/default/files/whats\\_newdocument/Market-study-on-e-Commerce-in-India.pdf](https://cci.gov.in/sites/default/files/whats_newdocument/Market-study-on-e-Commerce-in-India.pdf).

<sup>17</sup> 15/2020.

<sup>18</sup> 25/2017.

features or functionalities.

A similar methodology was applied in the approval of the merger between Facebook and Jaadhu Holdings Pvt Ltd., CCI recognized a gradual trend towards functional convergence among user apps, making it inappropriate to rely solely on minor feature differences for market determination. This approach by the CCI is well-suited to dynamic and complex digital markets where features and functionalities evolve continuously.

CCI has been criticized for not providing any substantial reasoning for its defining of the relevant market. There is a clear need for a uniform and systematic approach to determine the same as they can promote certainty and predictability in the system.

#### **IV. Conclusion**

Determination of the relevant market is important for assessing whether the competition is maintained in the market. A digital platform is fraught with the problems each multi-sided market has. CCI has been dealing with many cases related to digital platforms for the last one decade. Over the time, it has revised its way by addressing indirect network effects. The adoption of a nuanced approach is a much-appreciated step which can help in bringing more certainty.

The Competition Law Review Committee recommended that section 19(7) of the Competition Act should be broadened to include more factors of digital markets. The 2023 amendment to the Competition Act has broadened this list to include categories of customers, nature of services and cost associated with switching demand or supply to other products. Nevertheless, there is a need to include more factors and evidence in the list<sup>19</sup>. It also leads to having some pre-determined principles for CCI to define the relevant market and also to assist in assessing indirect network effects.

Hence, defining the relevant market in the digital realm requires a structured approach. First, understand the market's structure and identify competitive constraints. Assess the interdependence between user groups and consider the strength of indirect network effects, particularly between advertisers and users on platforms like search engines. Consistency is key,

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<sup>19</sup> The Competition (Amendment) Act, 2023, No. 09, Acts of Parliament, 2023 (India).

so rely on evidence such as surveys and consider partnering with certified agencies for data collection. This systematic method ensures a robust determination of the relevant market in digital environments, aligning with competition law principles.