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THE INDIAN EXPERIENCE IN THE LEGAL REGULATION OF DIGITAL PLATFORM COMPETITION

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Abstract. This thesis examines the rapidly evolving field of digital platforms and the mechanisms of their legal regulation under Indian law. It primarily elucidates the developmental stages of legal norms within competition law and highlights the specific characteristics of the contemporary legal regulation of digital platforms.

Key words: digital platforms, competition law, MRTP, economy, monopoly, superior bargaining position, fair competition

In India, competition regulation was initially governed by the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as the MRTP Act), the scope of application of which was considerably narrow. For instance, under the MRTP Act, the concept of “agreements” was interpreted simply as any arrangement or understanding, regardless of whether it was intended to be legally enforceable. However, due to the wave of liberalisation that commenced in the country in the early 1990s and the continuous transformation of market conditions resulting from rapid economic growth, the MRTP Act was increasingly perceived as obsolete.[1] In this regard, a High-Level Committee on Competition Policy and Law (also known as the Raghavan Committee) was established to examine the existing competition law framework and to formulate proposals for its enhancement.[2]

Consequent to the recommendations of the Raghavan Committee, a new Competition Act was enacted. This statute is substantially more comprehensive, serving to regulate emerging issues within the realm of competition law, and incorporates the broadest definition of the concept of “agreements” when compared with the antimonopoly legislations of other jurisdictions. The Competition Act defines the concept of an “agreement” as any arrangement, understanding, or action in concert. Under this definition, it is not required that such an arrangement, understanding, or concerted action be formal, executed in writing, or intended to be enforceable by legal proceedings. This definition is broader than the concept of an “agreement” found in the MRTP Act; furthermore, Section 2(b) of the Competition Act explicitly encompasses “action in concert”. This aligns closely with the concepts of “concerted practice” in the European Union and “collusion” (concerted action) in the United States.[3]

The Act also explicitly emphasises that there are no formal requirements regarding the form of an agreement. As noted by the Competition Commission of India (CCI) in the case concerning the anticompetitive conduct of Maruti Suzuki India Limited, anticompetitive agreements are typically conceived in "smoke-filled rooms", meaning it is inherently difficult to detect them in written or formal guises. Consequently, the statutory definition is inclusive and non-exhaustive, remaining applicable even in scenarios where parties act on the basis of mutual gestures, oral understandings, or implicit consensus.

The Act further provides an extensive interpretation regarding "anticompetitive agreements". It prohibits enterprises and individuals, including associations of enterprises and associations of persons from entering into any agreement in respect of production, supply, distribution, storage, acquisition, or

[1]https://www.researchgate.net/publication/347447200_The_Indian_competition_law_experience-_its_history_and_its_digital_future
[2] https://legalblur.com/competition-law-challenges-in-the-digital-economy-an-indian-legal-perspective/
[3] Digital Economy, Sustainability and International Economic Law Editors: Lei Zhang, Xiaowen Tan and Pinguang Ying. Published by Bentham Science Publishers Pte. Ltd. Singapore. All Rights Reserved. First published in 2023.

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control of goods or provision of services which causes or is likely to cause an appreciable adverse effect on competition within India. Such agreements are deemed "void ab initio" (having no legal effect).

In addition, the Act incorporates a distinct regulatory framework for horizontal agreements (agreements entered into between enterprises engaged in identical or similar trade of goods or provision of services) and vertical agreements (agreements entered into between enterprises operating at different stages of the production chain).

India's ranking in terms of the legal assurance of competition is determined on the basis of the Consumer Protection (E-Commerce) Rules. These Rules also define e-commerce entities, classifying them into marketplace e-commerce entities and inventory e-commerce entities.[4]

A marketplace e-commerce entity refers to an e-commerce entity that provides an information technology platform on a digital or electronic network to facilitate transactions between buyers and sellers. Digital platforms are likewise considered marketplace e-commerce entities, as they assist in executing electronic commerce transactions between service providers and consumers. The Rules clearly delineate the duties of marketplace e-commerce entities (platforms). These obligations specifically include explaining the primary parameters that, individually or collectively, are of the most significant importance in determining the ranking of products or sellers on their platforms. The relative importance of these primary parameters must be disclosed and made publicly available in a manner that is easily accessible to consumers.

These Rules represent a major milestone in consumer protection and e-commerce legislation in India. They vest responsibility for ranking transparency in the platforms and protect consumers by mandating explanations regarding the main criteria utilised in generating rankings.

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