



(Established under Galgotias University Uttar Pradesh Act No. 14 of 2011)

**ROLE OF THE COMPETITION COMMISSION IN  
REGULATING E-COMMERCE IN INDIA:  
CRITICAL STUDY**

*Dissertation to be submitted in partial fulfillment for the requirement of the  
degree of*

LL.M .

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## **DECLARATION**

I, here by declare that the dissertation entitled is based on original research undertaken by me and it has not been submitted in any University for any degree or diploma.

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## **CERTIFICATE**

This is to certify that the dissertation entitled-ROLE OF THE COMPETITION COMMISSION IN REGULATING E-COMMERCE IN INDIA: CRITICAL STUDY has been prepared by Nivedita Dimri pursuing LL.M from School of Law, Galgotias University under my supervision and guidance. I recommend it for evaluation.

Place:

Date:

(Name, Designation and Signature of Supervisor)

## **ACKNOWLEDGEMENT**

This dissertation has been able to get its final shape with the support of my supervisor. I wish to express my sincere gratitude to my supervisor Dr.Mudassir Nazir Sir, Assistant Professor of Law, Galgotias University, for his invaluable support, guidance and advice for the completion of this dissertation.Sir not only provided his ablest experience and scholarly guidance, but he also allowed me a freehand in completing this project. I shall remain grateful to him.

I am grateful to our Dean Sir PROF(Dr). Naresh Kumar Vats for supporting and guiding me in completing my research work.

I am grateful to our PROF(DR.) Shivangi Sharma for supporting and guiding me in completing my research work.

Deepest sense of gratitude to my parents for without whose support and blessings this dissertation would not have taken its present shape.

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## **LIST OF ABBREVIATIONS**

B2A- Business-to-Administration

B2B-Business-to-business

B2C- Business-to-Consumer

CAIT- Confederation of All India Traders

C2A- consumer-to-administration

C2B- Consumer-to-Business

C2C- Consumer-to-Consumer

CCI- Competition Commission of India

COMPACT- Competition Appellate Tribunal

CPA -The Consumer Protection Act, 2019

CRM- Customer Relations Management

DPIIT- Department for Promotion of Industry and Internal Trade

DVM- Delhi Vyapar Mahasangh

EDI- Electronic Data Interchange

ECS- Electronic Clearance Service

FDI- Foreign Direct Investment

FEMA- Foreign Exchange Management Act

G2C- Government-to-Consumer

LCC- Low Cost Carriers

MMT- Make MyTrip's

MPTP Act- Monopolies and Restrictive Trade Practices Act

OECD- Organization for Economic Cooperation and Development

OEMs- Original Equipment Manufacturers

OTAs- online travel agencies

RBI- Reserve Bank of India

SDA- Standard Development Agreement

TRACS- Thomson Reservation and Administration Control System

UNCTAD- United Nations Conference on Trade and Development

WTO- World Trade Organization's

## LIST OF CASES

- 1)All India Online Vendors Association v. Flip-kart Richard Whish and David Balley
- 2)Amazon Seller Services Private Limited v. Competition Commission of India & Ors.,on 11 June, 2021
- 3)Ashish Ahuja v. Snapdeal ,Case No. 17 of 2014.
- 4)Belaire owner' s association Vs. DLF (2001)
- 5)Competition Commission of India v. Bharti Airtel Ltd. and Ors,on 5 December, 2018
- 6)Competition Commission of India v. Steel Authority of India Ltd,9 September, 2010
- 7)Delhi Vyapar Mahasangh v. Flipkart & Amazon, Case No. 40 of 2018,
- 8)Fast Track Call Cab Private Limited v. ANI Technologies Pvt. Ltd, on 7 January, 2022
- 9)Federation of Hotel & Restaurant Associations of India v. MakeMyTrip India Pvt. Ltd, Case No. 14 of 2019
- 10)Lifestyle Equities v. Amazon Case ,Case ID: 2022/0108
- 11)Mohit Manglani v. Flipkart India (P) Ltd,Case No. 80 of 2014
- 12)M/s. Transparent Energy Systems Pvt. Ltd. v. TECPRO Systems Ltd,Case No. 36 of 2014
- 13)Shamsher Kataria v. Honda Siels Cars India Ltd. case, Case No.03/2011
- 14)Simrandeep Kaur, Ahuja v. Snapdeal
- 15)Tanisha Mishra, Ashish Ahuja v. Snapdeal, WorldPress, 2014
- 16)Uniglobe Mod Travels Pvt. Ltd. v. Travel Agents Association of India.& Ors., Case No. 03/2009

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# CHAPTER -1

## 1)INTRODUCTION

India's competition regulator, the Competition Commission of India (henceforth referred to as "the Commission"), is empowered to enforce competition laws."The purchase or sale of goods or services over computer networks, with payment methods and distribution not always completed online, is referred to as e-commerce, according to the OECD."<sup>1</sup>Competition law, also known as antitrust law, is the body of legislation that considers any obstacles and distribution in the market; the competition regulator is the organization in charge of monitoring the market's operation.

The Competition Act, 2002 (henceforth referred to as "the Act") gives the commission the authority to guard consumers' interests, prevent anti-competitive behavior, foster and maintain market competition, and guarantee the freedom of trade exercised by other market participants. It is defined by the Cambridge Dictionary<sup>2</sup>as the online marketplace for the purchase and sale of goods and services.It describes the transaction process of purchasing or offering goods or services via the Internet.<sup>3</sup>In the modern era, e-commerce is a quickly evolving platform. The industry is expanding due to a variety of factors, including a rise in Internet and smart phone users, large cost savings, and a wide range of services. But the internet shopping industry has also brought about serious problems with competition.

The Competition Act is a type of antitrust law that is widely used around the world to safeguard consumers at the macro level as opposed to the micro level and to shield small and medium-sized businesses from the abuse of large enterprises' or entities' dominant position. Each and every government strives to keep its citizens safe and secure.At the micro level, there is a simple fix. If there is a problem, the customer can visit the service

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<sup>1</sup> OECD Publishing, available at: <https://www.oecd.org/sti/ieconomy/oecdguidetomeasuringtheinformationsociety2011.htm> (Last visited on March, 2024)

<sup>2</sup> E-COMMERCE meaning in the Cambridge English Dictionary, available at: [dictionary.cambridge.org/dictionary/english/e-commerce](https://dictionary.cambridge.org/dictionary/english/e-commerce) (last visited on March, 2024).

<sup>3</sup> Innovation Pei, "E-Commerce: Purchasing and Selling Online" Ministry of Economic Development and Innovation, Ontario; available at: [http://www.gov.pe.ca/photos/original/IPEI\\_ebiz\\_ecomm.pdf](http://www.gov.pe.ca/photos/original/IPEI_ebiz_ecomm.pdf) (Last visited on March, 2024)



center to have it fixed if it has to do with a product purchase. If not, they can also file a complaint with the Tribunal under the 2019 Consumer Protection Act. This protection or safeguard is at micro level.

At the macro level, businesses operate to the point where it is initially difficult to estimate the loss or damage, but by the time it is realized, the harm has already been done. In this situation, the Competition Act of 2002 helps consumers by shielding them from the monopoly of large corporations on a macro level and promoting competition.

### **1.1)Review of Literature**

Ellison & Ellison, 2009 This research assesses how e-commerce affects the tendency of consumers to use information from a pricing comparison website to compare prices. Pricewatch1, a comparison website and firm-level data, testing preliminary assertions that "friction less commerce" would be made possible by the internet. It looks at whether the affirms the idea that e-commerce raises prices and enhances customer search competitiveness, and whether or not retailers could use internet deception technique

Gupta, 2014 In this essay, the author looks at the benefits of online shopping, including transaction costs, pricing transparency, and intermediaries."The first of its kind of reduced transaction costs in business due to e-commerce Business-to-business (B2B) Because buyers do not have to go through multiple middlemen to obtain supplier information, goods, and costs as they would in a traditional supply chain, e-commerce lowers search expenses." Transaction costs that are reduced constitute the second category of transaction costs. is the reduction of transaction processing expenses (such as purchase orders, invoices, and payment plans). The final One advantage of e-commerce that is discussed in this paper is pricing transparency, which is made possible by the ability to publish information about a single purchase or transaction online for easy access and visibility by all participants in the e-market. Pricing Increased pricing transparency reduces market inequalities. In these situations, buyers have a lot more time to consider their options and compare prices.

Anjali Gupta, E-commerce : Role Of E-Commerce In Today's Business, SCIRP, 2014<sup>4</sup>"Trade in goods and services via electronic means is referred to as electronic commerce, or e-commerce. B2B, B2C, C2C, and related opportunities support consumer markets and preferences in building electronic infrastructure to meet future challenges."Business has undergone a revolution thanks to e-commerce, which has altered the nature of competition. The internet, or "The NET," is a computer communication network that has created an online marketplace for businesses and consumers. The differences between traditional markets and the global electronic market place—like company capital size, for example—are gradually becoming less significant as a result of advancements in the Internet and Web-based technologies. India is leading the world in e-commerce growth. One of the reasons for that is the growing popularity of the Internet and the low cost of PCs."The Indian business community is becoming more and more aware of the potential that e-commerce presents. The primary goal of this paper is to examine the role that ecommerce plays in modern business."

Kumar and others, 2018<sup>5</sup>The author of this essay highlights the many benefits of online shopping for readers. E-commerce can help your company save money by cutting down on expenses related to deliveries, inventory, and other costs globalization. The company can better meet demand and stick to its production schedule with lower inventory costs. E-commerce can also enhance customer relations management (CRM). Since ecommerce depends on customer satisfaction, it can enhance "Customer relations management"(CRM). Increasing customer loyalty to a business's brand is also essential. The reduction of communication delivery costs due to internet-based messaging. A company can conduct e-commerce and offer global customer service thanks to its extensive global network. Viewing the product details allows customers.

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<sup>4</sup> Anjali Gupta, E-commerce : Role Of E-Commerce In Today's Business, SCIRP, 2014

<sup>5</sup> Nitin Kumar, Md Altab Hossin, Challenges and Opportunities of E- Commerce in India: Pathway for Sustainable E-Commerce, ResearchGate, April 2018

Competition Commission of India, Market Study On E-commerce In India Key Findings and observation, Competition Commission Of India, 08-01-2020 <sup>6</sup> -"Competition Commission of India" (CCI) initiated a market study on electronic commerce (ecommerce) titled 'Market Study on E-commerce in India.' The objective was to gain insights into the functioning of e-commerce in India and its impact on markets and competition due to its significant growth and importance across various product categories.

The study did not start with preconceived notions of competition harm from specific business practices but aimed to engage with industry stakeholders to understand the landscape and identify any emerging competition-related issues. It employed various methods, including secondary research, survey group discussions, one-on-one meetings, workshops, and stakeholder submissions. The study encompassed three main categories: consumer goods, accommodation services, and food services, involving participation from online platforms, businesses, payment system providers, and industry associations. While the focus was on gathering qualitative insights from market participants, secondary sources and consumer behavior perceptions were also considered.

The interim observations were presented in a workshop titled 'E-commerce: Changing Competition Landscape in India,' which facilitated discussions among stakeholders, followed by public comments on the interim findings. This report summarizes the study's main findings, emphasizing that they stem from a comprehensive analysis of inputs gathered through various research methods and stakeholder engagements.

S.S. Rana & Co. Advocates, CCI's Market Study On E-Commerce, "The Competition Commission of India" (CCI) on January 08, 2020<sup>7</sup> -Released its Report on "Market Study on E-commerce in India". In order to gain a deeper understanding of how e-commerce operates in India and the effects it has on markets and competition, CCI launched the study in April 2009. With a better understanding of market trends and new barriers to

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<sup>6</sup> Competition Commission of India, MARKET STUDY ON E-COMMERCE IN INDIA Key Findings and observation, Competition Commission Of India, 08-01-2020

<sup>7</sup> S.S. Rana & Co. Advocates, CCI's Market Study On E-Commerce, The Competition Commission of India (CCI) January 08, 2020

competition, the Study aims to establish the Commission's enforcement and advocacy priorities concerning e-commerce through industry engagement.

Karunjit Singh, Competition Commission of India pitches for self-regulation of ecomm platforms, The Economic Times, Last Updated: Jan 09, 2020 <sup>8</sup> "The Competition Commission of India (CCI) has introduced a set of self-regulation guidelines for the e-commerce sector, alongside the outcomes of an e-commerce market study initiated in April last year. The report titled "Market Study on e-commerce in India: Key Findings and Observations" emphasizes the need for clear and transparent policies regarding discounts, including the basis of discount rates for various products/suppliers funded by platforms, and the consequences of participation or non-participation in discount schemes." Additionally, the CCI recommends that e-commerce players enhance transparency in search rankings, data collection and usage, as well as user review and rating systems. Furthermore, the commission suggests that e-commerce firms should inform businesses on their platforms about any proposed changes in terms and conditions and implement them only after a reasonable notice period. Despite requests for comment, Flipkart and Amazon remained unresponsive at the time of press.

The study highlighted concerns raised by business users regarding potential manipulation or exploitation different platforms which give us result for seller to review.

Anshuman Sakle and Nandini Pahari, The Interaction between Competition Law & Digital and E-commerce Markets in India, Indian Journal of Law and Technology (2020)<sup>9</sup>- From last past few months, the Competition Commission of India (CCI) and Amazon, which owns Flipkart, have been embroiled in a legal dispute that has garnered media attention. "Under Section 26(1) of the Competition Act, 2002" (as amended) (Act), the CCI ordered the Director General (DG) to investigate the exclusive business practises of these two well-known e-retailers. However, the investigations were halted by the Hon'ble High Court of

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<sup>8</sup> Karunjit Singh, Competition Commission of India pitches for self-regulation of ecomm platforms, The Economic Times, Last Updated: Jan 09, 2020

<sup>9</sup> Anshuman Sakle and Nandini Pahari, The Interaction between Competition Law & Digital and Ecommerce Markets in India, Indian Journal of Law and Technology 2020

Karnataka (Karnataka High Court). Amazon and Flipkart initially petitioned the Karnataka High Court to halt the DG's investigation, arguing that the CCI lacked sufficient evidence to establish a prima facie case against them. It always try to see how CCI will control the conduct of all these companies in spite of all the legal and administrative barriers that exist in India, it leads to growth in the prominence of the ecommerce and digital marketing industries.

Aakash Batra, Ahaan Raizada, Redefining CCI's Role in the Digital World: Policy Analysis and Proposals,IRCCCL (Mar 18, 2021)<sup>10</sup>-In today's hyper globalized and digitized world, platform business models have become increasingly prevalent and have contributed,significantly to economic growth. These models have completely changed the structure of modern markets, making them more intricate and multifaceted. "Platforms lack a commonly accepted definition due to their dynamic nature and use in a variety of industries. In simpler terms, however, platforms can be thought of as a system that can be defined by network effects, allowing to communicate between two or more different user groups and facilitating an exchange that creates value for all parties involved." There are many different types of platforms, and they constantly affect producers, advertisers, sellers, buyers, and other relevant market participants.

Tanisha Mishra, Market Study on E-Commerce, a survey by the CCI- An Analysis , Manupatra (April 15 2021)<sup>11</sup>-On January 8, 2020, the CCI released its report titled "Market Study on E-commerce in India: Key Findings and Observations," which was the result of an online survey."The three main categories of e-commerce in consumer goods (mobiles, lifestyle, electrical & electronic appliances, and groceries), lodging services, and food services were covered by a package of secondary research, questionnaire surveys, focused group discussions, one-on-one meetings, a multi-stakeholder workshop, and written submissions of stakeholders." Participants in the study included sixteen online platforms,

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<sup>10</sup> Aakash Batra, Ahaan Raizada, Redefining CCI's Role in the Digital World: Policy Analysis and Proposals,IRCCCL Mar 18, 2024.

<sup>11</sup> Tanisha Mishra, Market Study on E-Commerce, a survey by the CCI- An Analysis , Manupatra. <sup>12</sup> Aaqib javeed (thesis), Competition Commission of India: It's role and efficacy in regulating Ecommerce in India, ResearchGate.

seven payment system providers, and 164 business entities from all over India. Eleven industry associations that represent various stakeholder groups also took part.<sup>3</sup> Under four broad categories, the survey results have been discussed.

Aaqib Javed (thesis), Competition Commission of India: Its role and efficacy in regulating E-commerce in India, Research Gate (2021)<sup>12</sup>- The author in his theses has talked about today's time where the present generation is using e-commerce, which is a dynamic and quickly expanding component. The industry is expanding due to a variety of factors, including a rise in Internet and smart phone users, large cost savings, and a wide range of services. But the internet shopping industry has also brought about serious problems with competition at the same time.

Azhar U. Bhuiyan, The issue of competition law compliance for the e-commerce sector, The Daily Star, December 11, 2021<sup>12</sup>- Businesses frequently raise concerns regarding the anti-competitive practices of e-commerce platforms, including allegations of deep discounting, self-preferencing, manipulation of search rankings, and lead in misusing of consumer data. While these accusations may not always be substantiated, e-commerce platforms remain susceptible to potential violations of competition law, risking significant fines imposed by the Competition Commission of Bangladesh (CCB). To address these concerns, the CCB convened a meeting with leading e-commerce platforms in Bangladesh, including Boom Boom, BabyneedsBD, Aladiner Prodip, Daraz Bangladesh Ltd., Priyoshop.com Ltd., Chaldal Ltd., Redex, and others on 21 September 2021. The objective of the meeting was to educate these platforms about various practices prevalent in the digital marketplace that could potentially breach competition law. Given this context, it is imperative for all e-commerce platforms to exercise caution regarding anti-competitive behaviors and seek legal advice to assess the compliance of their offerings on the platforms before launching them. In this article given above it talks about some commonly observed anti-competitive

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<sup>12</sup> Azhar U. Bhuiyan, The issue of competition law compliance for the e-commerce sector, The Daily Star, December 11, 2021

behaviour and all the actions of e-commerce platforms with keeping Bangladesh Competition law in mind.

Ananya Pandey, A critical analysis of consumer in E-commerce in India, De Jure Nexus Law Journal (2022)<sup>13</sup>-Mostly e-commerce industry in India has experienced very fast growth, with an estimated 150 million users in 2020 and 220 million by 2025. However, this growth is also indicative of an increase in fraudulent activities within the sector. "The effect of the new technological advancements and the massive convergence of ecommerce exchanges, have grabbed the eye of individual consumers, business enterprises, governments and international associations not as just working with the development of business endeavor but also representing a variety of challenges and faces to different segments of social and individual interests like information protection, consumer protection, security infringement etc." are the types of fraud that typically involve the consumer being taken advantage of In addition to conducting a critical analysis of the state of consumers in the Indian e-market, This research paper examines the Consumer Protection Act of 2019 and the Information Technology Act of 2000 in an attempt to identify legal loopholes.

Tanuj Manral, Abhishek Pokhriyal, Anjali Gupta, A REVIEW OF E-COMMERCE IN INDIA, IRJET Journal, May 2022<sup>14</sup> The e-commerce market in India has witnessed significant growth, and this paper aims to identify and analyze the factors responsible for this growth and propose strategies to further accelerate the development of the ecommerce industry. We examine prominent trends and provide evidence of how the Indian e-commerce sector is poised for substantial growth. Through a comprehensive literature review, we identify emerging business areas, trends, and the impact of COVID19 on the industry. It's evident that the focus has primarily been on stimulating demand in the e-commerce sector. However, there's a recognized need to shift our attention towards

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<sup>13</sup> Ananya Pandey, A critical analysis of consumer in E-commerce in India, De Jure Nexus Law Journal 2022.

<sup>14</sup> Tanuj Manral, Abhishek Pokhriyal, Anjali Gupta, A REVIEW OF E-COMMERCE IN INDIA, IRJET Journal, May 2022.

interventions and support for the supply side of the industry. Based on established trends, a set of strategies is recommended to policymakers to expedite the growth of the sector.

Dhwani Mainkar and Avineet Singh Chawla, CCI'S Market Study On E-Commerce :The Way Forward, Rgnul Financial & Mercantile Law Review ,May 30, 2022 <sup>15</sup> -The exponential growth of the E-commerce sector in India is primarily attributed to factors such as increased internet accessibility, relaxed FDI regulations allowing entry of global players, adoption of advanced technology, rising consumer demands, availability of funding opportunities, and the proliferation of digital wallets. To address the evolving landscape of digital transactions, the Competition Commission of India (CCI) conducted a comprehensive 'Market Study on E-commerce in India' in January 2020."Initiated in April 2019, the study aimed to comprehensively analyze the functioning of e-commerce in India and its impact on market dynamics and competition. With the e-commerce sector witnessing a remarkable 51% revenue growth, the challenges it presents to competition in India are multifaceted."

CCI identified inherent shortcomings within the e-commerce ecosystem, notably deep discounting practices that hinder offline businesses' ability to compete effectively. Moreover, the contractual terms imposed by digital sellers often tilt in favor of the seller, limiting buyer bargaining power.

Addressing data collection practices is crucial, necessitating a delicate balance between legal compliance and commercial transparency. The report also underscores the manipulation tactics employed by digital platforms in search results, data provision, and user reviews, including the use of price algorithms to inflate review ratings.

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<sup>15</sup> Dhwani Mainkar and Avineet Singh Chawla, CCI'S Market Study On E-Commerce :The Way Forward, Rgnul Financial & Mercantile Law Review ,May 30, 2022



Hongbo Xiao, Boyuan Liu & Zejia Hu, A study on C2B e-commerce model and how it succeeds from the perspective of customer satisfaction., DiVA portal, May 2022<sup>16</sup>-The emergence of consumer-to-business (C2B) in the sector of e-commerce it help in reshaping traditional consumption habits and try to built the landscape of the conventional e-commerce industry. Achieving customer satisfaction is the greatest challenge in the online shopping sector. In the fiercely competitive digital environment, adopting a customer-centric approach is crucial, particularly for the consumer-driven C2B model. "This thesis aimed to examine how the C2B business model achieved rapid expansion and built a large user base by focusing on customer satisfaction. Drawing on the theoretical framework of the online customer satisfaction model (Schaupp & Bélanger, 2005), the study employed surveys and qualitative semi-structured interviews with Pinduoduo users."The thesis concluded that Pinduoduo's C2B model, offering low costs through group purchasing and incentive's friends to join group orders, along with effective pre-sales support and an engaging website design, contributes to customer satisfaction and willingness to help to suggest the platform to others. However, there are some drawback also as still there are areas for improvement in product quality, post-sales customer assistance, and logistics services which need to get improved.

## **1.2)Statement of problem**

- The fast growth of e-commerce in India has created new challenges in the market that need careful regulation to keep competition fair. The Competition Commission of India (CCI) is responsible for this regulation. However, there is ongoing debate about how well the CCI is managing issues like unfair business practices and properly defining market boundaries in the e-commerce sector.

This analysis aims to examine how effective the CCI has been in regulating ecommerce, pointing out both its strengths and weaknesses, and suggesting ways to improve its role in this rapidly changing digital market

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<sup>16</sup> Hongbo Xiao, Boyuan Liu & Zejia Hu, A study on C2B e-commerce model and how it succeeds from the perspective of customer satisfaction., DiVA portal, May 2022.

- E-commerce businesses can operate using a marketplace model, an inventorybased approach, or a hybrid business model. This dissertation specifically focuses on e-commerce businesses that use a hybrid business strategy.
- This dissertation posits that e-commerce businesses employing a hybrid business model encounter unique regulatory issues that require targeted approaches from the CCI. By analyzing the CCI's current regulatory practices and their impact on hybrid e-commerce businesses, this study aims to identify areas for improvement to enhance fair competition in the digital marketplace.

### **1.3)Research Objectives**

- The purpose of this study is to understand and know role of Competition Commission of India in e-commerce, which basically mean to buy and sell the goods in online form.Dissertation also focus on the provisions, Judicial Approach regulations and literature related to e-commerce under Competition Act 2000.
- To identify the concept of Abuse Of Dominant and Anti Competitive Agreement in relation to e-commerce.n

### **1.4)Hypothesis**

The Competition Commission of India (CCI) plays a critical role in regulating the anti competitive practices which subsequently impacts market dynamics, consumer protection, and overall competitiveness.Competition Commission of India (CCI) has faced significant challenges in effectively regulating the fast-growing e-commerce sector in India, particularly with regard to managing unfair business practices and defining market boundaries.

### **1.5)Research Questions**

Q1)Whether there are concerns in the E-commerce sector or not regarding Competition?

Q2) Explain the Market Structure of E-COMMERCE platform?

Q3)What is the role and efficacy of the Competition Commission of India in regulating E-commerce ?

## **1.6) Research Methodology**

The research is solely doctrinal in nature which acquire legally relevant information and legal provisions under Competition Act 2002 to resolve the issue, this research also involve the collection of data from primary and secondary sources such as orders of CCI, regulations, committee reports, books, websites, newspaper,articles and journals and pertinent case laws, binding Acts .

## **1.7) Tentative Chapterization**

### **CHAPTER -1**

#### **INTRODUCTION**

Competition aims to ensure consumers pay the lowest possible prices for the best products and services. It involves businesses vying for customers to achieve goals like market share, sales, and profits. The Parliamentary Standing Committee on Home Affairs in India describes competition as economic rivalry for market power. Antitrust laws promote this rivalry to enhance consumer welfare. Definitions from the UK Competition Commission, US Department of Justice, and OECD highlight competition as a process where market forces operate freely, optimizing resource use for maximum economic benefit. The Competition Commission of India emphasizes competition as independent seller efforts to attract buyers and maximize profit.

### **CHAPTER-2 COMPETITION COMMISSION OF INDIA REGULATING E-COMMERCE :**

#### **OVERVIEW**

The rapid expansion of e-commerce in India has transformed the retail landscape, creating both opportunities and challenges. To ensure fair competition and protect consumer interests in this dynamic sector, the Competition Commission of India (CCI) plays a crucial

regulatory role. This overview about CCI talk about regulation of ecommerce, anti competitive law, abuse of dominant position, relevant market and consumer protection. By exploring key cases, regulatory actions, and policy developments, we aim to provide a comprehensive understanding of how the CCI look upon the problems of the e-commerce and its impact on the future of e-commerce in India.

In India, e-commerce adoption is very frequent. E-commerce offers low costs and a wide range of options, enabling easy price comparisons." Competition ensures consumers get the best prices and quality, benefiting the economy by providing access to high-quality products and enhancing competitiveness. Effective competition fosters innovation and efficiency, improving consumer welfare, while fewer market participants can lead to higher prices and reduced satisfaction."

### **CHAPTER -3**

#### **HISTORICAL EVOLUTION OF E-COMMERCE**

examined the growth of e-commerce and the resulting technological advancements integrated into commercial operations. However, this evolution has also led to the emergence of competition issues within the e-commerce landscape." Various e-commerce models exist, including Business-to-Business (B2B), Business-to-Consumer (B2C), Consumer-to-Business (C2B), Consumer-to-Consumer (C2C), Government-to-Consumer (G2C), and Government-to-Business (G2B)."

I further explored the evolution of competition law in India, detailing its phases up to the present. Understanding the development of competition law in India provides valuable insights into how regulatory frameworks have adapted. Additionally, I examined countries with the largest e-commerce markets. Understanding the dynamics of these leading e-commerce markets offers valuable lessons and benchmarks for policymakers, regulators, and businesses.

### **CHAPTER -4**

## **JUDICIAL APPROACH OF CCI IN REGULATING E-COMMERCE**

The Competition Commission of India (CCI) plays a pivotal role in this framework, utilizing its judicial powers to look upon and regulate the dynamic and complex ecommerce landscape. This chapter explores the judicial approach of the CCI in regulating e-commerce, focusing on its methods of addressing anti-competitive practices, market dominance, and consumer protection. "By gaining knowledge about all landmark cases and enforcement actions, we can gain insights into the CCI's strategies, challenges, and effectiveness in fostering a competitive and fair digital marketplace. This analysis aims to shed light on the evolving judicial role of the CCI and its impact on the future trajectory of e-commerce in India."

### **CHAPTER-5**

#### **MARKET STRUCTURE OF E-COMMERCE PLATFORM**

As discussed in Chapter 5, online marketplace platforms are multi-sided platforms that connect various user groups for the transaction. Online platforms that provide search services act as intermediaries, linking search users with advertising. When customers and sellers meet to shop, an online platform can be considered the digital equivalent of a shopping mall. Owners of online marketplace platforms, such as Amazon or Flipkart, offer a space for buyers and sellers to conduct transactions.

These 'marketplaces' major competitive advantage lies in their ability to lower search costs by effectively matching supply and demand, with the primary difference between offline and online marketplaces being their scale. Additionally, online markets may include features such as built-in auction systems and transaction optimization, like providing user data for targeted advertising. Companies like Flipkart and Amazon use a marketplace model to operate, but it is the duty of every platform to ensure consumer protection. This chapter also addresses recurrent consumer protection issues in ecommerce and the importance of fostering consumer confidence in the sector.

### **CHAPTER-6**

## **COMPETITION COMMISSION IN REGULATING E-COMMERCE IN India: CRITICAL ANALYSIS**

The rapid growth of e-commerce in India has transformed the retail landscape, creating new opportunities and challenges for consumers, businesses, and regulators. As online marketplaces expand, the need for robust regulatory frameworks becomes paramount to ensure fair competition and protect consumer interests. The Competition Commission of India (CCI) plays a crucial role in overseeing and regulating the e-commerce sector, addressing issues such as anti-competitive practices, market dominance, and consumer protection. This critical analysis explores the CCI's regulatory approach towards e-commerce, evaluating its effectiveness, the challenges it faces, and the implications for the future of digital commerce in India. By examining key case studies and regulatory interventions, this analysis aims to provide insights into the evolving dynamics of competition law in the digital age and its impact on the e-commerce ecosystem.

### **CHAPTER -7**

#### **CONCLUSION AND SUGGESTION**

Finally, I have concluded my discussion on the topic and provided recommendations for future actions.

## **CHAPTER 2**

### **2.1) COMPETITION MEANING**

To guarantee that customers pay the lowest possible price is the aim of competition. cost for the best products and services. "The primary purpose of the consumer interests are what drive competition"<sup>17</sup>A comprehensive explanation of In a market, competition occurs when businesses or sellers fight for customers in an effort to accomplishing specific business

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<sup>17</sup> The Parliamentary Standing Committee on Home Affairs: 93r Report on the Competition B20018-158 (2002), available at [https://www.prsindia.org/uploads/media/1167471748/o1173\\_2007060873\\_Standing\\_Committee\\_Report\\_1\\_on\\_Competition\\_Bill\\_2001.pdf](https://www.prsindia.org/uploads/media/1167471748/o1173_2007060873_Standing_Committee_Report_1_on_Competition_Bill_2001.pdf)

goals, such as reaching a target market share, sales, and profits."As the Parliamentary Standing Committee on Home Affairs in India noted, competition is fundamentally an economic rivalry between economic enterprises to control greater market power, even though it is an evasive term that is understood differently in different contexts." However, the phrase refers to a process in which commercial enterprises compete with one another for clients in order to sell their goods in the business sector. Businesses fight to outwit and sometimes even outright destroy their rivals during this process.As economists understand the term, it seems clear today that the primary goal of antitrust laws is to promote competition.Competition is described as a process of rivalry between firms or other suppliers (hereinafter referred to as firms) seeking to win customers' 'businesses over time by the UK Competition Commission.

Competition is the process by which market forces operate freely to assure that society's scarce resources are employed as efficiently as possible to maximize overall economic benefits, states the US Department of Justice welfare. The OECD defines competition as a market in which businesses or sellers independently pursue the support of consumers in order to fulfill a specific business goal, such as increasing sales, profits, or market share.In its advocacy brochure, the Competition Commission of India provides an explanation of competition.

In everyday speech, sellers engage in independent competition with one another for buyers' business in an effort to maximize profit (or other business objectives). The competition outcomes are highlighted in the above definitions.

Lower costs and prices for goods and services, better quality, more choices and variety, more innovation, greater efficiency and productivity, economic development and growth, greater wealth equality, a stronger democracy by dispersing economic power, and greater well being by encouraging individual initiative, liberty, and free association are all benefits of market competition.<sup>18</sup>When there is no competition, inefficiency in operations, and low-quality services, the result would be an inefficient use of resources, which would be harmful

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<sup>18</sup> Maurice E. Stucke, "Is competition always good? 1 Journal of Antitrust Enforcement, 162-197 (2013)

to welfare of the consumer.<sup>19</sup><sup>20</sup>If there are any decrease in the quantity of participants it will result in an adverse effect on clients and other team at higher prices. In the absence of fair and free competition, the stakeholders are deprived of the benefits that come with it. When purchasing a product, a customer wants to get the most out of it, but the product seller prefers to sell it for as much as it will maximize his profit. Competition Laws made by competition commission<sup>21</sup> are frequently seen as serving the interests of consumers, which encourages healthy competition and, in turn, growth in the economy and industry. However, main focus of consumer protection law<sup>21</sup> is on customer transactions and how to create better market conditions for informed choice.

Competition is therefore "a necessary handmaiden to efficient trade."

## **2.2) The CCI's Enforcement Evolution in the E-commerce Sector**

The Competition Commission of India (CCI) scrutinized allegations of anti-competitive practices involving online travel agencies (OTAs) and e-commerce platforms around the time it published its E-Commerce Report. In its examination of the competitive dynamics within the market for "sale of travel and travel-related services," the CCI focused on MakeMyTrip's (MMT) acquisition of Go-Ibibo in October 2016. Instead, it found that OTAs like MakeMyTrip faced significant competitive pressures from traditional offline travel channels. However, in a subsequent review of MMT's conduct in the market for online intermediation services for booking hotels in India, the CCI observed a divergence from its previous stance. This review stemmed from allegations concerning MMT's implementation of excessive discounts, exclusivity arrangements, and parity clauses. In this preliminary order, the CCI acknowledged that hotel operators now perceive OTAs as a distinct distribution channel. The intervening period had solidified OTAs' status as a

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<sup>19</sup> Competition Commission, "Report of High-Level Committee on Competition Policy and Law 1.1.9 (1999), available at [www.competitioncommission.gov.in/Act/Report\\_of\\_High\\_Level\\_Committee\\_on\\_Competition\\_Policy\\_Law\\_SVS\\_Raghavan\\_Committee29102007.pdf](http://www.competitioncommission.gov.in/Act/Report_of_High_Level_Committee_on_Competition_Policy_Law_SVS_Raghavan_Committee29102007.pdf) (Last visited on May 2, 2024) <sup>21</sup> The

Parliamentary Standing Committee on Home Affairs, 93<sup>r</sup> Report on the Competition Bill, 2001 8-

<sup>20</sup> (2002), available at

[https://www.prsindia.org/uploads/media/1167471748/bll173\\_2007050873\\_Standing\\_Committee\\_Report\\_on\\_Competition\\_Bill\\_2001.pdf](https://www.prsindia.org/uploads/media/1167471748/bll173_2007050873_Standing_Committee_Report_on_Competition_Bill_2001.pdf) (Last visited on May 2 2024)

<sup>21</sup> unita Mishra, All about Consumer Protection , Article of Consumer Protection Act 2019 , Housing.com,(2021).



separate and viable channel for hotel bookings, without compromising their reach to customers. Consequently, the CCI recognized that OTAs could no longer be equated with offline modes or direct sales.

Likewise, earlier this year, in the case of *Delhi Vyapar Mahasangh v. Flipkart & Amazon*.<sup>22</sup> The CCI initiated an investigation into Flipkart and Amazon based on allegations of engaging in exclusive tie-ups, preferential listing, deep discounting, and promotion of private labels. The investigation revealed that both Flipkart and Amazon wielded considerable market power in their respective domains, potentially creating an environment where their actions could detrimentally impact competition.

As a result, the CCI instructed its investigative branch, the office of the director general (DG), to launch a thorough investigation into the matter the decision diverged from the Court of Civil Appeals' prior ruling in *All India Online Vendors Association v. Flipkart*,<sup>23</sup> which suggested a more competitive landscape in online marketplace platforms.

Additionally, the CCI emphasized that despite Flipkart's substantial size and resources, no single player could dominate the relevant market at this stage of the market's evolution.<sup>24</sup>

### **2.3) Role of competition commission in regulating e-commerce in India**

Considering the multifaceted nature of e-commerce, a variety of laws and regulations from different sectors govern present e-commerce activities. These include the Consumer Protection Act, 2019<sup>25</sup> the Finance Act 2020, the Information Technology Act 2000, the Foreign Exchange Management Act, 2000, and the Competition Act, 2002.<sup>27</sup> Among these, the Competition Act, 2002, plays a pivotal role in providing a regulatory framework by preventing practices that may harm competition. Sections 3 and 4 of the Act, addressing anti-competitive agreements and abuse of dominant position, respectively, are particularly

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<sup>22</sup> *Delhi Vyapar Mahasangh And vs - Flipkart-The-Fight-For-Oneplus-Exclusivity-* on 13 January, 2020

<sup>23</sup> *All India Online Vendors Association vs Flipkart India Private Limited & Other* on 6 November, 2018

<sup>24</sup> Indian Ecommerce Industry report, 2019, <<https://www.ibef.org/industry/ecommerce.aspx>>(last visited on May 4 2024)

<sup>25</sup> The Consumer Protection Act, 2019, 2019-08-09, available at India Code, <https://www.indiacode.nic.in> › handle Consumer Protection Act, 2019(last visited on May 3, 2024) <sup>27</sup> *ibid*

relevant for regulating e-commerce platforms. E-commerce essential /platforms with Foreign Direct Investment (FDI) are currently regulated by Press Note 2(2018) in conjunction with SI No. 15.2, Schedule 1, of the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.

The Government has received representations from the Confederation of All India Traders (CAIT) against e-commerce companies. Under the Foreign Exchange Management Act, 1999, investigative powers are vested with the Enforcement Directorate (ED), which has duly received and taken up the matter for investigation. Additionally, complaints lodged by CAIT, alleging biased practices by banks in providing cash backs and discounts for purchases made through e-commerce websites like Amazon and Flipkart, are currently under examination by the Competition Commission of India.

As of now, neither the Reserve Bank of India (RBI) nor the Enforcement Directorate has initiated investigations into allegations of violations of Foreign Direct Investment (FDI) policy and the Foreign Exchange Management Act (FEMA)<sup>26</sup> in the deal between Flipkart and Aditya Birla Fashion and Retail. This information was provided by the Minister of State in the Ministry of Commerce and Industry, Shri SomParkash, in a written reply in the Rajya Sabha.

## **2.4) CCI's MARKET STUDY ON E-COMMERCE : THE WAY FORWARD**

"The E-commerce sector is by far the fastest growing segment in India, thanks to increased internet access, relaxation of FDI norms that allowed major international players to enter Indian markets, increased adoption of ever-evolving technology and innovative practices, rising consumer demands, easy access to funding opportunities, and, most notably, the rise of digitalized wallets. On January 8, 2020.<sup>27,28</sup> The competition Commission of India (CCI)

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<sup>26</sup> ibid

<sup>27</sup> Market Study on E-commerce in India- Key Observations and Findings, CCI, 8th January,

<sup>28</sup> ,<[https://www.cci.gov.in/sites/default/files/whats\\_newdocument/Market-study-on-e-Commerce-inIndia.pdf](https://www.cci.gov.in/sites/default/files/whats_newdocument/Market-study-on-e-Commerce-inIndia.pdf)> (last visited on May 4 2024)

issued a detailed report titled "Market Study on E-commerce in India, addressing key concerns about digitalized transactions in the country. The primary goal of the study, which started back in April 2019, was to investigate and comprehend the workings of e-commerce in India as well as its effects on markets and economic competition.

Dynamic<sup>29</sup> presents a wide range of competitive challenges. According to CCI, there are a number of inherent problems with the e-commerce structure that are primarily harmful to fostering a fair and healthy competitive environment in the economy and stand in the way of achieving a pro-competitive economy. These shortcomings include, among other things, the deep discounting feature that prevents the offline industry from being able to compete with e-commerce companies on a sustainable basis.<sup>30</sup> The buyers are often presented with unfair terms by these digitalized sellers in their contracts, which limits their ability to negotiate. These contractual provisions are in favor of the e-seller unilaterally and disproportionately. There are many restrictions on the gathering of data, and it is important to find the ideal balance between

legal necessity and the business needs of openness. The report gathered identifies the main ways that digital trading forums manipulate price algorithms to show inflated review ratings. These manipulations occur in the search results, data provision, and user review and rating mechanisms.

The CCI made an effort to offer some tenable answers to the e-commerce industry's mounting worries. The CCI listed "platform neutrality" as the most crucial issue to be resolved in its list of priorities. "It recommended that a pro-competition strategy could only be realized when there is an improvement in search ranking, collection, use, and sharing of data, transparency and credibility in search ranking, user review ratings, and a decrease in asymmetrical information dissemination."

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<sup>29</sup> Indian Ecommerce Industry report, 2019, <<https://www.ibef.org/industry/ecommerce.aspx>>(last visited on May 4 2024)

<sup>30</sup> A. Gunasekaran, "E-commerce and its Impact on Operations Management," International Journal of Production Economics, Vol.75, Issue.1, pp. 185-197, 2002.

### 2.4.1) Major Takeaways

The report attempts to lower the regulatory thresholds for bringing a specific stakeholder under the investigation net while simultaneously aiming to achieve the highest levels of "self-regulation" in an effort to stand on the pedestal of fair competitive practices and thereby facilitate sustainable economic relations. The CCI<sup>31</sup> has proposed a mechanism to review the exclusionary conducts in the contracts entered into by the stakeholders in an effort to stop the discriminatory and unfair terms being incorporated in platform-to-business contract terms where the operators of e-commerce platforms typically enjoy a leveraged status.

The study places a strong emphasis on rewriting the contract terms in a way that is both logical and pro-competition. To stop dishonest business practices and unfair competition, user review rating systems should be strengthened in terms of accuracy and dependability. Price parity clauses were declared to be fundamentally discriminatory and distorting in nature. "They are necessary to discourage small-scale retailers from providing lower prices on other e-commerce portals and on their independent websites."<sup>3233</sup> The travel, hospitality, and food delivery engines are where one is most likely to see this structure. The report has denounced these activities because it is abundantly evident that they have a strong potential to result in unfair competition that is distorted.

Therefore, the summary of the report given above aims to provide a concise overview of the Indian e-commerce scene, the nuances of the functionality of various sectors via these platforms, and the necessary changes that should be implemented in order to stop deceptive practices and ensure competition on the basis of merit. By proactively implementing these realistic steps, the prevailing asymmetrical graph in the information distributed and the

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<sup>31</sup> Competition Commission, "Report of High-Level Committee on Competition Policy and Law 1.1.9 (1999), available at [www.competitioncommission.gov.in/Act/Report\\_of\\_High\\_Level\\_Committee\\_on\\_Competition\\_Policy\\_Law\\_SVS\\_Raghavan\\_Committee29102007.pdf](http://www.competitioncommission.gov.in/Act/Report_of_High_Level_Committee_on_Competition_Policy_Law_SVS_Raghavan_Committee29102007.pdf) (Last visited on May 2, 2024)

<sup>32</sup> CCI's study on E-commerce in India- Antitrust Issues and Recommendations, Khaitan & Co, 9th January, <sup>33</sup>, accessed at <<https://www.khaitanco.com/thought-leaderships/CCIs-study-on-E-Commerce-in-IndiaAntitrust-Issues-and-Recommendations>>

imbalance of bargaining power will be eliminated. The market study is a qualitative report that is essentially the first of its kind from the CCI.

As a result, a thorough analysis involving pragmatic research, stakeholder group discussions and written statements, individual meetings, questionnaire surveys, and workshops with numerous stakeholders has been produced.<sup>3435</sup> A change in CCI's priorities with regard to online markets has been signaled by the study, which has been instrumental in gathering vital and important insights about the main structures and activities of e-commerce in India. It is clear from this report that up until now, the regulatory and administrative authorities have treated the e-commerce<sup>36</sup> players relatively softly, viewing them more as an expanding alternative distribution channel than as a fully developed, independent market. The market study also extensively details the Commission's<sup>37</sup> well-defined plans to regulate online markets, and this report will function as a strict benchmark to initiate high-level inquiries into issues related to e-transactions.

## **2.5) Models of Competition**

### **2.5.1) Perfect Competition**

Two common ideas about competition exist in the context of Perfect competition is the ideal end-state for competition law and policy a process (dynamic competition)<sup>38</sup> In the market with ideal competition, because so numerous and knowledgeable, buyers and sellers can each take as a price taker, capable of purchasing or disposing of any desired

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<sup>34</sup> Competition Commission pitches for self-regulation of ecomm platforms, Economic Times, 9th January,

<sup>35</sup> ,<<https://economictimes.indiatimes.com/industry/services/retail/cci-recommends-transparency-aboutdiscounts-to-e-commerce-players/articleshow/73159450.cms> from=mdr> (last visited on May 7 2024)

<sup>36</sup> E-Commerce : Role Of E-Commerce In Today's Business. International Journal of Computing and Corporate Research, A, Gupta, January, 2014(1)

<sup>37</sup> Competition Commission, "Report of High-Level Committee on Competition Policy and Law 1.1.9 (1999), available at [www.competitioncommission.gov.in/Act/Report\\_of\\_High\\_Level\\_Committee\\_on\\_Competition\\_Policy\\_Law\\_SVS\\_Raghavan\\_Committee29102007.pdf](http://www.competitioncommission.gov.in/Act/Report_of_High_Level_Committee_on_Competition_Policy_Law_SVS_Raghavan_Committee29102007.pdf) (Last visited on May 7, 2024).

<sup>38</sup> <sup>7</sup>Blaug M. Is Competition Such a Good Thing? Static Efficiency versus Dynamic Efficiency, 19 Review of Industrial Organization 37 (2001)

amount without influencing the market prices.<sup>39</sup>When an economist considers markets that are competitive, The "economic model," which typically represents perfect competition, comes to his mind.A market with perfect competition is hypothetical. Structure direct competition between businesses or sellers exist because there are a great deal of sellers (and buyers) in the market, each offering the same product at the going rate at the same time. The most competitive market imaginable is one with perfect competition where everyone accepts price.

### **2.5.2). Effective Competition:**

When multiple businesses engage in fierce competition with one another, the market structure is said to be effective because consumers benefit from the best possible prices, quality, and innovation.Because there are few obstacles to entry, a wealth of information, and active consumer choice in these markets, businesses can compete on the basis of efficiency and unique product offerings. Economic growth and consumer surplus are the outcomes of productive, dynamic, and allocative efficiency that are fostered by effective competition

### **2.5.3)Contestable Market:**

In theory, a contestable market is one in which a small number of dominant firms are nevertheless subject to potential competition that limits their actions.Contestable markets are characterized by a lack of substantial barriers to entry or exit, which enables prospective entrants to pose a challenge to established firms. Despite the existence of monopolistic or oligopolistic structures, contestable markets have competitive outcomes because the threat of entry serves as a deterrent against anti competitive law.

### **2.5.4)Workable Competition:**

A practical approach to competition policy that seeks to produce competitive outcomes in imperfect market conditions is known as "workable competition."Workable competition, as opposed to perfect competition, acknowledges that although markets may not always

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<sup>39</sup> Black J., A Dictionary of Economics, (1997) 348: WJ Kolasky, 'What Is Competition? A Comparison of US and European Perspectives (2004) 49 Antitrust Bul 29, 31

have the best features, they can still produce effective results when the right regulations are in place.<sup>40</sup> Reasonable levels of market concentration and coordination are permitted while effective competition policies address market failures, encourage competition where it is practical, and safeguard consumers against anti-competitive behavior.

### **2.5.5) Dynamic Competition:**

The concept of dynamic competition highlights how innovation, entrepreneurship, and technological advancements shape market dynamics and competition.<sup>41</sup>

Businesses compete in dynamic competition not just on the basis of quality and price, but also on their capacity for innovation, the launch of new goods, and the ability to adjust to the shifting needs of the market.<sup>42</sup> Firms are encouraged to invest in research and development by regulatory policies and market conditions that foster dynamic competition, which eventually results in increased productivity, consumer welfare, and economic growth. Dynamic competition refers to the type of competition that is characterized by continuous innovation, technological advancements, and evolving market conditions. Unlike static competition, which focuses on the market structure and the conduct of firms within a fixed framework, dynamic competition emphasizes ongoing change and the constant improvement of products, services, and business models over time.<sup>43</sup> It reflects the ability of firms to adapt to and drive changes in the market through innovation, catering to shifting consumer preferences, and responding to competitive pressures in a rapidly changing environment.

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<sup>40</sup> J.M.Clark, Towards a theory of Workable Competition Law, 30 (1940)

<sup>41</sup> Richard Whish and David Bailey, Competition Law 16 8 (Oxford University Press)

<sup>42</sup> Metro-SB-Grossmärkle GmbH and Co. KG v Commission case 26/76 [1978] 2 CMLR 1

<sup>43</sup> Galbraith, American Capitalism: The Concept of Countervailing Power (Houghton Mifflin, 1952)  
Richard Whish and David Bailey, Competition Law, 6 (8th edn.. Oxford University Press)

## **2.6) CCI DELINEATING THE “RELEVANT MARKET” IN THE CONTEXT OF E-COMMERCE**

When evaluating whether a specific firm that has met the requirements for the assessment of dominance under S.4 read with S.19(4) of the Act has engaged in an abuse of dominance, the notion of the "relevant market" is essential. Both a relevant product market and a relevant geographic market are considered relevant markets for the purposes of the Act. Under S. 19(6) and (7) of the Act, respectively, are listed the different criteria that must be included in an analysis of the same. When it comes to physical businesses,

these analyses are fairly straightforward; however, when considering the digital economy, specifically e-commerce, they become more intricate.

Very little has been done to establish solid jurisprudence on the topic by the CCI's rulings in cases involving e-commerce companies accused of abusing their dominant market position. In 2014, as e-commerce gained momentum in India, the CCI adopted a contrasting stance regarding the admissibility of combining the online and offline markets as the relevant market for specific products.

First, the informant, Ashish Ahuja, claimed that SanDisk Corporation and Snapdeal.com had exploited their respective dominant positions in violation of S.4 of the Act in the case of Ashish Ahuja v. Snapdeal.com.<sup>44</sup> This is because Snapdeal, an online retailer, and the informant had a deal.

Operator online sale of his goods, such as laptops, hard drives, and pen drives. The informant was then notified that only SanDisk India authorized partners were allowed to sell SanDisk products on the Snapdeal portal, and the products he had been selling were taken down from the portal. Additionally, in order for the informant to keep selling his goods on Snapdeal, SanDisk required him to obtain a "No Objection Certificate." Since the informant claimed that SanDisk held a monopoly in the electronics industry, the CCI conducted a study of the pertinent product market to ascertain if SanDisk had misused its

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<sup>44</sup> Mr. Ashish Ahuja vs Snapdeal.Com Through Mr. Kunal Bahl, ... on 19 May, 2014(India)



supposed position of dominance. It was determined that the market for portable consumer storage devices, such as SD memory cards and USB pen drives, was the relevant product market. Crucially, it regarded memory cards and pen drives as interchangeable goods. The CCI deduced from this that discounts and shopping experiences varied between offline and online markets. As a result, purchasers would consider their options in both markets before making a choice.

As a result, the two markets were not distinct, important markets. It was also noted that Snapdeal.com's function was limited to management a web portal to enable buying and selling. The Commission continued by stating that there were other competitors operating in the Indian e-commerce market (the relevant geographic market), including Amazon, eBay, Flipkart, and others, and that special discounts and deals are what make the ecommerce market thrive. Snapdeal.com is not a dominant player in the relevant markets because of these factors. It is important to highlight that the CCI adopted the stance that e-commerce platforms are equivalent to traditional brick and mortar selling platforms in this particular case. This implies that the analysis's relevant market is much larger, with e-commerce platforms having a negligible market share and hence defying the notion that they are dominant player.<sup>45</sup>

The CCI took this stance in the Mohit Manglani v. Flipkart India Private Limited and Ors. Case, where the informant claimed that some e-commerce companies were abusing their dominant positions by signing exclusive contracts with vendors of specific products. In this instance, the market for books constituted the relevant product market. The CCI found that none of the online retailers or sellers could be regarded as individually dominant, regardless of whether e-commerce markets are viewed as distinct relevant markets from offline markets.

As radio cab services were not comparable to other forms of transportation, the CCI held in an almost contradictory ruling in the case of Fast Track Call Cab Private Limited v. ANI

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<sup>45</sup> Srinandini Kar, 'Ashish Ahuja Vs SnapDeal' (7 May 2020) Law Column <<https://www.lawcolumn.in/ashish-ahuja-vs-snapdeal>> (last visit on May 10 2024)

Technologies Pvt. Ltd.<sup>46</sup> that the radio cab service market should be regarded as a relevant market in and of itself. In determining that e-commerce platforms are not different from brick and mortar platforms and, therefore, constitute the same relevant market, the CCI employed the same analysis of factors in the previous two cases, including convenience to consumers and ease of choice.<sup>47</sup>

Regarding the act of abuse of dominance by e-commerce operators, these cases demonstrate the CCI's incredibly narrow perspective. The dominant e-commerce operators have been released from their liabilities under S.4 of the Act by the CCI by broadening the definition of the relevant market, but they have failed to take into account their actual market shares. In an effort to clarify this idea, the CCI stated that the market for services offered by online portals for the sale of goods in India constitutes the relevant market for e-commerce operators in *All India Online Vendor's Association v. Flipkart India*.<sup>48</sup> Simrandeep Kaur, *Ahuja v. Snapdeal*<sup>49</sup> this point of view holds that the relevant market cannot be defined by taking into account e-commerce markets alongside offline ones.

The CCI passed directives in January 2020 to conduct investigations into abuse of dominance, just days after the organization published its market study on e-commerce in India.

## **2.7)E-Commerce retail model**

For online retail models to work, both digital and physical businesses must have a website. If the business has a history of operating physical locations, its internet presence ought to enhance its standing. In order to gain a foothold in the market, emerging businesses must invest in and advertise their products through creative means. Numerous strategies are still

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<sup>46</sup> Matrimony.com Limite Googlehttps://www.cci.gov.in/sites/default/files/07% 20% 26% 20% 2030%20of%202012 pdf> (last visit on May 10 2024)

<sup>47</sup> Ayush Verma, 'Relevant market definition in e-commerce (21 August 2020), <https://blog.ipleaders.in/relevant-market-definition-e-commerce/> (last visit on May 10 2024)

<sup>48</sup> All India Online Vendors Association vs Flipkart India Private Limited & Other on 6 November, 2018

<sup>49</sup> Simrandeep Kaur, *Ahuja v. Snapdeal: Decoding the E-Commerce Anomaly* (7 April 2021) All India Legal Forum <https://allindialegalforum.in/2021/04/07/ahuja-v-snapdeal-decoding-the-e-commerceanomaly/> accessed 1 November 2021

available to boost online retail sales and boost revenue for the business. The products of the company determine how it will market and generate leads, regardless of whether it focuses on B2B, B2C, C2C, or B2B sales.

### **2.7.1)The e-commerce retail models recently ending**

The two most common e-commerce retail models are still B2B and B2C. This means promoting your goods to other companies or to customers directly. It requires framing the product according to the intended buyer, but it uses a variety of marketing channels. Companies must, however, adjust as newer models keep appearing in the market

### **2.7.2)The most innovative e-commerce models**

D2C, or direct to customer, and dropshipping are two more recent business models that assist companies in upending the status quo. More specifically, D2C models have been doing very well lately. While it is comparable to dropshipping, the product in this instance is supplied straight from the manufacturer or producer.

### **2.7.3)Classic B2B and B2C models continue to thrive**

The best e-commerce models continue to be direct marketing channels. Businesses continue to generate new leads through digital campaigns, social media, and email. A successful e-commerce business plan is needed to turn them into devoted clients. Emails are the best available channel for increasing conversion rates among all others.

## **2.8)Advantages of E-Commerce**

Electronic commerce, or e-commerce, has many benefits for consumers, businesses, and the economy at large. A few of the main benefits are as follows:

**2.8.1) Global Reach:** Without physical storefronts or geographic restrictions, ecommerce enables businesses to reach a global audience. As a result, there are more market opportunities and possible sales volume.<sup>50</sup>

**2.8.2) Accessibility 24/7:** Customers can shop whenever it is convenient for them, as online stores are open seven days a week. This eliminates the need for them to adhere to traditional store hours.

**2.8.3) Cost Efficiency:** Rent, utilities, and personnel are just a few of the overhead expenses linked to physical stores that are decreased by e-commerce. This makes it possible for companies to offer competitive pricing and possibly larger profit motive.<sup>50</sup>

**2.8.4) Convenience:** With the ability to explore and buy products from any location with an internet connection, online shopping provides customers with an unmatched level of convenience. Time is saved and there is no longer a need to travel.

**2.8.5) Greater Product Variety:** Owing to their infinite shelf space, e-commerce platforms are able to provide a greater range of products than stores. Customers now have access to a wide variety of global brands and products.

**2.8.6) Customization:** By using algorithms and data analytics, e-commerce platforms can tailor each customer's shopping experience. This includes tailored product recommendations, targeted promotions, and customized marketing messages.

**2.8.7) Simplicity of Comparison:** When shopping online, customers can quickly evaluate the features, costs, and customer feedback of goods offered by various vendors. Transparency encourages competition and gives customers the power to make wise decisions about what to buy.

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<sup>50</sup> F.Gomez-Herrera, B. Martens, and G. Turlea, "The drivers and impediments for cross- border e commerce in the EU," 28 Information Economics and Policy Journal Eiseler 83-96 (2014). <sup>50</sup>

Nicole Martins Ferreira, Advantage and Disadvantages of E-Commerce, 1 Apr, 2024

**2.8.8) Faster Transaction Processing:** Order placement and delivery times can be shortened by using e-commerce to complete transactions quickly and effectively. In addition to raising the possibility of repeat business, this raises customer need

**2.8.9) Scalability:** Without the limitations of physical infrastructure, e-commerce enterprises can readily scale their operations to accommodate growth.<sup>51</sup> Businesses can adjust to shifting market conditions and customer demands thanks to this flexibility.

**2.8.10) Environmental Benefits:** E-commerce can have environmental benefits by reducing the need for physical stores, paper receipts, and transportation-related emissions. A smaller carbon footprint can be achieved through delivery optimization and digital transactions.

## **2.9) E-commerce Market Analysis**

The size of the e-commerce market is projected to be USD 8.80 trillion in 2024 and grow at a compound annual growth rate (CAGR) of 15.80% to reach USD 18.81 trillion by 2029. The number of people using smartphones worldwide is rising in tandem with the expansion of internet usage. Among the e-commerce options accessible to the internet-connected clientele, which is becoming more and more popular as internet usage increases, are digital content, financial services, travel and leisure, and e-tailing, to mention a few. Consequently, it is anticipated that customers' technical expertise will favorably affect market expansion.

Online business is becoming more and more popular among large corporations and established businesses due to the decreased cost of infrastructure and communication. E-commerce<sup>52</sup> enables the company to connect with customers more effectively, giving the business vital exposure. E-commerce is also fueled by online marketing resources like

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<sup>51</sup> T. M Nisar and G. Prabhakar, "What factors determine e-satisfaction and consumer spending in ecommerce retailing? 93 Journal of Retail and Consumer Services 135-144 (2017)

<sup>52</sup> Michael Keenan, What is eCommerce, manychat.com, January 26, 2021

Facebook and Google ads. Small and medium-sized enterprises are rapidly growing, particularly in Russia, China, South Africa, and India. The number of start-ups using the online marketplace to conduct business has increased thanks to initiatives like Made in India and Start-up India, which has accelerated market growth. It is anticipated that the lack of technological infrastructure deployment in rural areas of countries like Brazil, China, and India will inhibit market growth.

Due to the ongoing COVID-19 outbreak, consumers are choosing to shop online more and more as physical stores close. Important economies like China, India, Italy, and the United States were severely impacted by the outbreak. Europe and North America were therefore predicted to have a big influence on the market.

## **2.10) NEW Government Regulatory Landscape for e-commerce Foreign Direct Investment (FDI):**

The Ministry of Commerce's Department for Promotion of Industry and Internal Trade (the "DPIIT")<sup>53</sup> announced tougher regulations governing foreign direct investment ("FDI") in e-commerce companies on December 26th, 2018.

Improvements to the FDI policy:

In the policy, which defines e-commerce, e-commerce entities, market place-based models, and inventory-based models, it is made clear that 100% FDI is allowed in marketplace models of e-commerce under the automatic route, while no FDI is allowed in inventory-based models. On February 1, 2019, these modifications became operative.

Ownership of Equity:

Online retailers are prohibited by the new guidelines from offering products of companies in which they have equity. According to the policy, a company that has equity participation

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<sup>53</sup> Setindiabiz, What is DPIIT And How to Get Recognition Under It, Setindiabiz.com, January 20, 2024, Setindiabiz <https://www.setindiabiz.com> › wha... What is DPIIT And How to Get Recognition Under It? | Benefits, (last visited on May 7, 2024)

in or control over its inventory by e-commerce marketplace entities is not allowed to sell its goods on the online platforms of those marketplace entities.

Based on inventory or on the market:

The policy goes on to say that an e-commerce marketplace entity is not allowed to possess or have control over the products that are sold on the platform. The market entity will become an inventory-based model if it has any ownership or control over the goods it sells. If an e-commerce marketplace entity accounts for more than 25% of a vendor's sales, then the marketplace entity will be considered to control the vendor's inventory.

Exclusivity:

Additionally, exclusive partnerships between marketplace-model-following e-commerce companies and sellers on their platform are prohibited by the new regulations. It is against the law for an online retailer to instruct a vendor to sell only on one platform. This change may have an impact on smartphone brands that have up until now only been available online at sites like Flipkart and Amazon India. Services the E-Commerce Company Offers:

In a marketplace model, the e-commerce company must provide equal opportunities for all vendors and is prohibited from having any direct or indirect influence over the selling price of goods or services. that the e-commerce company must provide its services in a fair and non-discriminatory manner to all of the platform's vendors. These services include expedited delivery, logistics, warehousing, marketing, advertising, payments, and financing, to name a few.

## **2.11) Laws Governing E-Commerce**

### **2.11.1) Information Technology Act (IT Act) of 2000**

The IT Act contains a number of provisions that regulate how e-commerce is operated. The Central Government is required by Section 84A of the IT Act to promote e-commerce and e-governance. It must also allow for the safe use of electronic devices. Section 43A of the IT Act contains provisions pertaining to data protection. Identity theft is punishable under

Section 66A of the IT Act.<sup>54</sup>The provision states that anyone who uses someone else's password fraudulently faces up to two years in prison, a fine of INR one million, or both.

The Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 apply to e-commerce entities. The Intermediary Rules 2011 under the IT Act will apply to intermediary websites and the content that appears on them. Under consultation with the Ministry of Information and Broadcasting, the Ministry of Electronics and Information Technology (MeitY) notified the Ministry of Information and Broadcasting on February 25, 2021, about the Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021 ("Rules"). The rules, which cover regulations regarding the standards that intermediaries must adhere to and the blocking of content access under the IT Act, were released in accordance with the government's authority to enact rules under Section 87 of the Act.

The Rules, among other things, prohibit intermediaries from hosting, storing, publishing, and other activities, stipulate an information retention period, and mandate that intermediaries post their rules and regulations, privacy policy, and user agreement on their websites and applications and notify users of them on a regular basis.

### **2.11.2)Consumer Protection Act, 2019 and Consumer Protection (E-Commerce) Rules, 2020.**

The Consumer Protection Act, 2019 (CPA 2019) and the Consumer Protection (ECommerce) Rules, 2020 (E-Commerce Rules) were recently notified by the Ministry of Consumer Affairs, Food, and Public Distribution. To address special challenges arising in this age of digitization and e-commerce, the CPA 2020<sup>55</sup> introduced significant changes to the consumer protection law of 1986. An online marketplace, as well as the selling and acquisition of goods and services, are governed by the E-Commerce Rules.The ECommerce Rules cover the following: (a) all products and services (including digital goods) that are transacted over an electronic or digital network; (b) all e-commerce models,

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<sup>54</sup> Mayashree Acharya,IT Act 2000: Objectives, Features, Amendments, Sections, Offences and Penalties,cleartax, Apr 17th, 2024

<sup>55</sup> Rule 2(1) of the Consumer Protection (E-Commerce) Rules, 2020



such as marketplace and inventory models (explained below); (c) all e-commerce retail, including retail trading under multiple brands and single brands; and (d) any unfair trade practices that occur in any of the e-commerce models.

Although e-commerce entities are subject to the E-Commerce Rules, individuals do not fall under their purview if: (a) their activities are carried out in their personal capacity; or (b) their actions are not associated with any regular or systematic professional or commercial activity.<sup>56</sup>E-Commerce Rules simply do not apply to transactions that are conducted in the course of an individual's personal capacity and are not part of a regular or systematic professional or commercial.<sup>57</sup> Therefore, natural persons who occasionally engage in business-to-consumer or consumer-to-consumer interface transactions may be excluded.

Furthermore, even though an e-commerce entity may not have been founded in India, it is nevertheless subject to the extraterritorial application of the E-Commerce Rules insofar as it regularly provides goods and services to Indian customers. A draft amendment to the E-Commerce Rules, being considered by the Ministry of Consumer Affairs, aims to expand the scope and provide a list of dos and don'ts for e-commerce entities. However, it is not yet clear where this amendment will end up. The following are the significant aspects of the Draft Amendment:

- The E-Commerce Rules applied to e-commerce entities that were owners, operators, or managers of e-commerce platforms; however, the Draft Amendment expands the definition of a "e-commerce entity" to include related parties and any entity that the e-commerce entity hired to fulfill user orders;
- E-commerce companies must legally register with the Department for Promotion of Industry and Internal Trade (DPIIT)<sup>58</sup> and prominently display their registration numbers to users on both their platform and invoices;

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<sup>56</sup> Proviso to Rule 2(1) of the Consumer Protection (E – Commerce) Rules, 2020

<sup>57</sup> Rule 2(2) of the Consumer Protection (E – Commerce) Rules, 2020

<sup>58</sup> *ibid*

- prohibition against promoting or displaying deceptive advertisements for any purpose other than those related to the entity's regular business operation.
- Modification to the e-commerce entities' grievance redressal process by adding a "Chief Compliance Officer" to the existing grievance redressal mechanism. This person would be an Indian citizen and resident manager or senior employee of the e-commerce entity, and they would be responsible for any proceedings involving third-party information, data, or communication links that the e-commerce entity provides;
- Designating a nodal contact person, who must be an Indian citizen and resident employee (apart from the Chief Compliance Officer) to facilitate ongoing cooperation between law enforcement officials and agencies regarding order and requisition compliance; and

### **2.11.3)Sectorial and Regulatory Compliance**

- Foreign Exchange Management (Non - Debt Instruments) Rules, 2019

The Foreign Exchange Management<sup>59</sup> (Non-Debt Instruments) Rules, 2019 currently govern e-commerce entities and platforms that receive foreign direct investment (FDI). A company incorporated under the Companies Act of 1956 or the Companies Act of 2013 is considered an e-commerce entity under the aforementioned regulations

- The 2009 Legal Metrology Act

A company incorporated under the Companies Act, 1956 or the Companies Act, 2013, a foreign company covered under Section 2(42) of the Companies Act, 2013, or an office, branch, or agency in India covered under Section 2(ii)(v) of the Foreign Exchange Management Act, 1999 owned or controlled by a person resident outside of

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<sup>59</sup> ibid

India and conducting e-commerce business are all considered "E-commerce entities" according to the Legal Metrology Act.

Any organization engaged in e-commerce must adhere to and fulfill the labeling and packaging requirements established by the Legal Metrology Act, 2009,<sup>60</sup> as well as the Legal Metrology (Packaged Commodity) Rules, 2011. These regulations stipulate that the online platform must provide the same mandatory information about the goods on the network as must be provided on physical packages

While e-commerce corporations are in charge of making the declaration, product manufacturers, sellers, dealers, and importers are accountable for the accuracy of any statements made on marketplace model e-commerce portals. If false information is declared on a marketplace model e-commerce portal, the manufacturer, seller, dealer, or importer will be held accountable and punished under the Legal Metrology Act and rules; however, the e-commerce institution will be held accountable and punished for neglecting to make pertinent pronouncements as required by the Legal Metrology and rules.

#### **2.11.4) Other Laws**

- **Indian Contract Act, 1872**

Electronic contracts, or "e-contracts," are created during online transactions and are essentially standard form agreements subject to the Indian Contract Act, 1872 ("Contract Act").<sup>61</sup> Therefore, in order for an e-commerce contract to be deemed legitimate, it must— (i) be entered into with the parties' free consent and—(ii) be supported by a legitimate consideration. The Contract Act also regulates the formation of contracts between buyers, sellers, and middlemen; the terms under which proposals are communicated and accepted; and the revocation of existing contracts. Any online platform's privacy, return, and terms of service policies also need to be made sure they are enforceable contracts. Under the 2008 Information Technology Act are the provisions pertaining to electronically formed

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<sup>60</sup> Legal Metrology Act, 2009, TeamLease Regtech <https://www.teamleaseregtech.com> › Legal Metrology Act, 2009, October 2021 (last visited on May 8, 2024)

<sup>61</sup> Section 10, Indian Contract Act, 187

contracts. The Information Technology Act of 2000's Section 10A guarantees the legality of contracts entered into electronically. It declares that a contract shall not be regarded as invalid or unenforceable merely because electronic means were used for the purpose of communication, acceptance, revocation, and acceptance of the proposal when done in that manner. We covered more about the enforceability of electronic contracts in our earlier post, which can be found here.

- **Sale of Goods Act, 1930**

The requirements for the entity's shipping and sales policies are outlined in the Sale of Goods Act, 1930. In order to control the sale of goods, additional terms are also specified, including warranties, conditions, and the transfer of property in goods. The policy must additionally state whether return and refund options are offered or not.

- **Act of Competition, 2002**

The Competition Act of 2002 lists a few elements of the e-commerce ecosystem as possibly being subject to competition-related laws. Platform neutrality and parity clauses; exclusive agreements between online retailers (e-tailers) and sellers; deep discounts offered on online platforms, which are frequently predatory in nature. The provisions found in Section 4 concerning the abuse of dominant position and Section 3 concerning anti-competitive agreements also apply to e-commerce platforms.

## **CHAPTER-3 HISTORICAL EVOLUTION OF E-COMMERCE**

### **3.1) Meaning of E-Commerce**

E-commerce, short for electronic commerce, refers to the purchase and sale of and services over the Internet. It refers to a variety of online transactions, such as online retailing, electronic payments, online auctions, and internet-based supply chain management. E-commerce enables businesses and consumers to conduct transactions without the need for physical interaction, resulting in increased convenience, flexibility, and accessibility. It has transformed the way businesses and consumers shop, allowing for global reach, 24-hour

availability, and personalized shopping experiences. Ecommerce platforms make transactions easier by connecting buyers and sellers via online marketplaces, websites, and mobile applications. Payment processing, order fulfillment, and customer service are typically done electronically, which simplifies the entire shopping experience. Overall, e-commerce has transformed the way businesses operate, reshaping industries, expanding market opportunities, and driving economic growth in the digital age.

### **3.2)Types of E-Commerce ?**

In generence refers to an online business transaction between a supplier and a customer. However, e-commerce can be divided into six major categories, each with its own set of characteristics.

As a result, before launching your online business, you must define a clear business model, target customers, and other factors to determine which type of e-commerce is best suited to your services.

There are six fundamental types of e-commerce:

**3.2.1)Business-to-Consumer (B2C):** This type of e-commerce involves transactions between business<sup>62</sup>and individual customers. It includes online retailing, which allows businesses to sell products directly to customers via websites or online marketplaces .

**3.2.2)Business-to-business (B2B)** e-commerce refers to exchanges between companies in which one company sells goods or services to another. Electronic procurement systems, supply chain management, and bulk orders are frequently used in this kind of ecommerce.

**3.2.3)Consumer-to-Consumer (C2C):** C2C e-commerce refers to transactions that take place between individual consumers and are made possible by online marketplaces or

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<sup>62</sup> For instance, Amazon.com, eBay.com and Taobao.com are among the top 20 most visited websites globally, according to Alexa rankings of March 2021, available at <http://www.alex.com/tops les> (Last visited on Mayl 10, 2024)

platforms.<sup>63</sup> Peer-to-peer sharing platforms, websites with classified ads, and online auctions are a few examples.

**3.2.4) Consumer-to-Business (C2B):** In C2B e-commerce, private customers provide companies with goods or services. This can include individuals selling their creative work or expertise to businesses, or freelancers offering their services to companies via online platforms.<sup>64</sup>

**3.2.5) Business-to-Administration (B2A):** Transactions involving businesses and public sector or governmental organizations comprise B2A e-commerce. Online license or permit applications, electronic tax filing, and online procurement systems are all examples of this.<sup>65</sup>

**3.2.6) The term "consumer-to-administration" (C2A)** refers to e-commerce transactions that take place between private citizens and public sector or governmental entities. Using websites or portals to access government information or resources is one example, as is paying taxes online or scheduling government services online Origin.<sup>66</sup>

### **3.3) Contemporary Relevance of E-Commerce**

E-Commerce has made a great approach in today's world it has helped in reshaping the way businesses operates and customer shop. With the time rapid change has taken place in technology and people are adopting internet so while keeping this in the mind Ecommerce has taken great approach in today's time. E-commerce holds significant contemporary relevance as it continues to transform the way businesses operate and consumers shop. In today's digital age, e-commerce provides businesses with global market reach, allowing

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<sup>63</sup> Cudjoe Dan, Consumer To Consumer (C2C) Electronic Commerce: The Recent Picture, 4 International Journal of Networks and Communications 29-32 (2014)

<sup>64</sup> Rania Nemat, "Taking a look at different types of e commerce" 1 World Applied Programming Journal 100-102 (2011).

<sup>65</sup> Tutorials Point, E-commerce Business Model (2021), available at [https://www.tutorialspoint.com/e\\_commerce/e\\_commerce\\_business\\_models.htm](https://www.tutorialspoint.com/e_commerce/e_commerce_business_models.htm) (Last visited on May 26, 2024).

<sup>66</sup> Rhoda C. Joseph, Government to Business (G2B) perspectives in E Government 2 (2013), available at: <https://pdfs.semanticscholar.org/c04f/9ae44839914093614119f5cf3af125f22eeb.pdf> (Last visited on May 10, 2024)

them to expand beyond local markets and tap into a worldwide customer base. It offers unparalleled convenience, with 24/7 accessibility, enabling customers to shop at their own convenience. There are numerous Relevance of ECommerce -

### **3.3.1)Global Market Reach:**

A key reason e-commerce is vital is its ability to offer businesses global market reach. Unlike traditional brick-and-mortar stores, an online store surpasses geographical boundaries, allowing businesses to expand their customer base beyond local markets. Ecommerce enables businesses to reach customers across various countries and time zones, eliminating barriers and creating new opportunities. This global reach significantly impacts business growth and revenue generation.

### **3.3.2)Increased Convenience:**

E-commerce provides exceptional convenience for both businesses and customers. For customers, it removes the necessity of visiting physical stores, allowing them to browse and purchase products or services from the comfort of their homes. Online stores are available 24/7, enabling customers to shop whenever they choose, without being restricted by time constraints or store hours. This convenience has significantly fueled the growth of e-commerce, as customers increasingly appreciate the ease and flexibility it offers.

### **3.3.3)Expanded Product Range:**

The digital nature of e-commerce enables businesses to offer a much broader range of products or services than physical stores. Unlike traditional retail spaces with limited shelf space, online stores can list virtually unlimited products. This extensive product range gives customers a wider selection to choose from, accommodating their diverse needs and preferences. Businesses can more easily diversify their offerings, introduce new products, and adapt to changing market demands, thereby enhancing customer satisfaction and loyalty.

### **3.3.4)Data Analytics and Personalization:**

E-commerce produces extensive data on customer behavior, preferences, and purchasing patterns, providing invaluable insights for businesses. This data allows businesses to make informed decisions, tailor marketing strategies, and enhance customer experiences. Advanced analytics enable businesses to deeply understand their customers, identify trends, and optimize operations. Personalization features, such as targeted recommendations and customized offers, boost customer engagement and build longterm relationships.

### **3.3.5)E-commerce can be operated with lower overheads and reduced risk.**

Starting an online business involves significantly lower startup costs compared to opening a brick-and-mortar store. Online business owners do not have to bear expenses such as shop rental, hiring sales staff, utility costs, and security measures.As a result, you can competitively price your products. Additionally, running an online store allows you to achieve higher profits while assuming less risk.

**3.3.6)Personalize Your Shopping Experience:**One of the clear benefits of having an online store is the ability to observe and understand customer behavior. In a physical store, constantly following a potential customer and asking about their needs or reasons for not purchasing would be intrusive and uncomfortable. With e-commerce, you can, for example, send an email to track where a customer left off in the purchasing process and remind them to complete it. This capability allows you to improve the shopping experience on subsequent visits by streamlining the order process or suggesting products that match the customer's preferences.

Overall, e-commerce's flexibility, reach, and data-driven insights make it a crucial component of modern business strategies, driving growth, innovation, and competitive advantage in a rapidly evolving marketplace.

## **Growth of competition law in India**

The enactment of the Monopolies and Restrictive Trade Practices Act (MPTP Act), 1959 in India brought about regulatory measures for the first time in its history. The MRTP Act's



original goals were to control monopolies, prevent the concentration of economic power in a small number of hands, and outlaw monopolistic and restrictive trade practices. These goals were outlined in detail in Article 39, clauses (b) and (c) of the Indian Constitution. Therefore, one of the fundamental principles of our state policy is to guarantee social and economic justice while simultaneously fostering industrial and economic growth for the benefit of the populace and gradually reducing the concentration of wealth and economic power.<sup>67</sup> Not everyone, though, agrees with the MRTP Act's passage; M. V. ,Kamath<sup>68</sup> for example, believes that the MRTP Commission's appointment has stopped the trend toward a decentralized economy.

### **3.4)The Competition Act. 2002**

The Monopolies and Restrictive Trade Practices Act of 1969 was replaced with this Act. The MRTP Act shall be repealed, and related matters shall be transferred to the Competition Commission, which shall be established pursuant to the Competition Act 2002, as per Section 55 of the Competition Act. The rationale behind the repeal is that, given the new, liberal business environment that has taken hold in the nation, the MRTP Act is no longer appropriate for handling competition-related issues that may emerge.

Below is a list of the antitrust matters that this Act particularly addresses:

A)Abuse of a position of authority; and

B) Any combination of businesses that exceeds the specified threshold level for the assets or turnover of the participating businesses, whether through an acquisition of a business or a merger of businesses.

The Competition Commission of India (CCI) was founded in accordance with the Act and officially opened for business on October 14, 2003. One organization is the Competition Commission of India (CCI), a quasi judicial body. The Commission investigates allegations that the Act's provisions have been broken, either on its own initiative following

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<sup>67</sup> Verma, D.P.S., MRTP Law-principle, provisions and cases, Published by Manas Publication, New Delhi.1992.

<sup>68</sup> Kamath, M.V.. The Privy Purse Case Pg. 146, 2007, Hay House India.

information from the public, or at the behest of the federal, state, or local governments, or a statutory body. Orders issued by the Competition Appellate Tribunal (COMPAT) and the Supreme Court may be appealed from the Competition Commission of India (CCI) under the specific sections mentioned in Section 53A of the Act.

xxxiv Four main areas of competition law were covered by the Competition Act of 2002, and as previously The CCI started executing them in stages earlier. Among the four are Anti—competitive agreements (Section 3), Abuse of dominance (Section 4), Combinations regulation (mergers and alliances (section 5 and 6) and Competition advocacy (Section 49). The CCI's primary focus during the first phase was on advocating for competition. Through raising awareness and providing training on competition-related issues in a variety of forums, the Commission carried out extensive advocacy efforts. Phase 2 saw the CCI begin working on cases involving abuse of dominance and anticompetitive agreements through adjudication. All agreements pertaining to the manufacture, supply, distribution, storage, purchase, or control of goods are implied to be anti-competitive agreements. services rendered, which has harmed or is anticipated to have harmed Indian competition significantly. Abuse of dominant position describes circumstances in which any business or organization, among other things, sets unreasonable or discriminatory terms or prices for the purchase of goods or services, or places restrictions on the amount of goods produced or services provided.

#### **3.4.1) Belaire owner' s association Vs. DLF (2001)**

The CCI ruled against DLF Ltd. in *Belaire Owners Association v. DLF*. imposing a \$ 124 million fine, which is equivalent to 7% of the company's average turnover over the three years prior. Leading real estate company DLF Ltd was discovered to be abusing its dominant position and putting unfair terms in their contracts with clients. According to the CCI, DLF decided on its own to expand the building from 19 to 29 stories without first getting permission, and it took so long to finish that the buyers were unable to take possession of their apartments even after the contract stated that they should have. In the *Belaire* case, the competition tribunal had stayed the CCI penalty order. Moreover, in the event that the company lost the case, it required DLF to provide an undertaking to deposit the full fine plus 9% interest. The decision implied that consumer welfare may play

a major role in determining future cases of abuse of dominance. In order to protect the interests of consumers, the decision also introduced the concept of government planning in the real estate industry.<sup>69</sup>Prior to the COMPAT, the decision was appealed.

### **3.5)E-commerce Growth in India**

Since e-business is a subset of e-commerce, e-commerce can be thought of as an effective selling tool and as a straight distribution system, which is a different approach to getting products to customers than the traditional distribution method that relies on middlemen like jobbers, wholesalers, and retailers.

Because it eliminates middlemen from the distribution process and uses websites to collect product orders, the e-commerce system is essentially similar to the direct distribution system in that it transfers goods and services directly from producers to end consumers. Information technology, or IT (Siddegowda, Ilango & Devi, 2016), is essentially changing how businesses operate globally. In fact, the e-commerce sector has long since entirely changed to become a digital one. Because e-commerce has established itself as a key component of the new economy and the best method to conduct business globally, it will create a new platform for business development. The current business climate in developing nations, like India, has the ability to foster the growth of the ecommerce sector. Brand E-commerce is essential to raising internet usage and creating jobs. Younger generations are increasingly becoming the most valuable consumers in the global market and play a significant role in online shopping. In particular, the number of years of internet use (Vasumathi, Sasi & Subashini, 2016) is an important independent variable in predicting the preference towards virtual buying.

After going through several stages, e-commerce now holds a significant position in the Indian business environment. These stages of e-commerce's evolution are illustrated below.

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<sup>69</sup> *Belaire Owners' Association vs Dlf Limited, Huda & Ors. Supplementary ...* on 3 January, 2013(India)

### **3.6) Phases of Evolution of E-commerce**

The following describes the various stages of e-commerce's evolution, which are divided into first and second phases:

#### Phase One (1995–2005)

The first wave of e-commerce in India began in 1995 when the country gained access to the internet. Furthermore, Multi-National Corporations (MNCs) were drawn to the economic liberalization that followed the introduction of reforms in 1991, which resulted in a notable expansion of the Information Technology (IT) sector. The license system, high taxes, and import restrictions were eliminated as a result of liberalization policies, which also made it easier for small and medium-sized businesses (SMEs) to expand. As mentioned below, the early adoption of the internet by the IT sector and SMEs resulted in the creation of job searches, marriage portals, and B2B. In 1995 Amazon.com was most famous newretailer on whole Internet, it was only one to starts selling online.<sup>70</sup>

Ebay also got interduced for help their business.<sup>7172</sup>

**B2B Directory:** In 1996, India saw the launch of its first online B2B directory. The primary driver of the expansion of B2B virtual portals was the liberalization of the nation's international trade policies.

**Virtual Marital:** When the first virtual matrimonial portal was introduced in India in 1996, the belief that matchmaking is a process that only occurs in heaven was replaced with the idea that marriages occur in cyberspace.

**Virtual Recruitment:** In 1997, the Indian market for virtual recruitment began to take shape. The expansion of the services sector following the implementation of economic reforms in

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<sup>70</sup> Amazon opens for business, History, available at <https://www.history.com/this-day-in-history/amazonopens-for-business>

<sup>71</sup> US Securities and Exchange Commission, eBay to Acquire PayPal, Exhibit 99.1 (July 8,

<sup>72</sup>), [https://www.sec.gov/Archives/edgar/data/1103415/000091205702026650/22084015zex-99\\_1.htm](https://www.sec.gov/Archives/edgar/data/1103415/000091205702026650/22084015zex-99_1.htm)

1991 resulted in the creation of new jobs, and the internet proved to be an effective medium for connecting employers and job seekers.

The initial wave of e-commerce in India was distinguished by low internet penetration, a small online shopping user base, slow internet speed, low consumer acceptance of online shopping, and insufficient logistics infrastructure.<sup>73</sup> The IT downturn in 2000 caused the collapse of more than 1,000 e-commerce businesses in India, resulting in a muted activity in India between 2000 and 2005.

### **3.6.1)Second Phase (2005 to Present)**

Following a period of low activity from 2000 to 2005, e-business has seen significant growth, particularly in the areas of travel, retailing, group purchasing, societal interaction, and so on, as shown below:

**Air Travel:** In 2005, Low Cost Carriers (LCCs)<sup>74</sup> entered the Indian aviation market, ushering in India's second phase of e-commerce. Travel became the largest segment, and people began to rely on the internet to find travel-related information and book tickets. As a result, the success of the online travel segment made consumers comfortable with shopping online, paving the way for a significant improvement in online retail.

**Virtual Travel:** The decision of low-cost carriers (LCCs) such as IndiGo and SpiceJet to sell tickets online and through third parties facilitated the development of Online Travel Agents (OTAs). Prior to the introduction of low-cost carriers in 2005-2006, air travel was considered a luxury reserved for the wealthy and corporate travelers. LCCs changed the landscape by making air travel affordable to a large number of people. They created their own websites and partnered with OTAT distribute tickets online and thus cut costs. By the

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<sup>73</sup> ibid

<sup>74</sup> Kurt Peters, "Internet Retailer announces its first e-retailing conference Digital Commerce 360, Jan 5, 2005, available at: <https://www.digitalcommerce360.com/2005/01/04/internet-retailer-announces-its-first-e-retailing-conference/> (Last visited on May 10, 2021).

time LCCs started their online ticket booking schemes, the Indian Railways had already implemented the e-ticketing initiative. The final release of Virtue Mart.<sup>75</sup>

**Virtual Selling:** The growth of online retail was fueled in part by the changing urban consumer lifestyle and the desire for convenience when shopping at home. This segment emerged in the second movement in 2007, with the launch of several online retail websites. Entrepreneurs were motivated to start new businesses in order to differentiate themselves by improving the customer experience and establishing a strong market presence.

**Group Purchasing:** In the early part of 2010, the group buying and daily deals models became a global trend. Group-buying sites have seen a significant increase in unique visitors and membership, which has benefited e-business.

**Societal Interacting:** In recent years, social networking has gained traction in the Indian online space, becoming an essential part of people's daily lives. Initially, it was used to stay in touch with friends, but now social networking websites serve as a foundation for any company's digital strategy. It is known as social commerce and is an important way for e-commerce businesses to reach out to their target customers. Companies have begun to establish a presence on social media for branding purposes, to solicit feedback from customers, and to promote new product launches.

In this context, it is noted that e-commerce marketing<sup>75</sup> (Rath & Samal, 2013) is a modern technique used by business firms, companies, and industries to conduct their business operations via the e-net system in order to improve their business plans, strategies for better product promotion, as well as increase the economic health of various industries, firms, organizations, and so on. Despite the recent doom and gloom, a retail rebirth is beginning, and it is digital.<sup>76</sup>

Following an understanding of the concept and evolution of E-

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<sup>75</sup> VirtueMart Demc, available at <https://virtuemart.net/features/demo> (Last visited on May 10, 2024) <sup>75</sup>

idib

<sup>76</sup> Rick Curlis, The future of the high street lies in connected retail, The Guardian, July 18, 2013, available at <https://www.theguardian.com/media-network/media-network-blog/2013/jul/18/future-high-street-connected-retail-me-tailing-burberry> (Last visited on May 11, 2024).

commerce, an attempt was made to review previous studies related to the study in order to establish the study's relevance, which is presented chronologically in brief below.

### **3.6.2)E-Commerce timeline from 1960 to present**

E-commerce has its roots in the 1960s, when businesses began were able to carry out electronic transactions known as electronic data interchange (EDI). According to IBM, EDI stands for "standard electronic format that replaces paper-based documents, such as purchase orders or invoices.

In 1979, Michael Aldrich invented online shopping, giving us the "concept of teleshoppingzed business and how people conduct business. Aldrich's The technique later became known as e-commerce.<sup>77</sup> According to Kevin Turner, principal lecturer at Brighton Business School, "Aldrich and his company were extremely advanced for the time. It showed that people could conduct transactions from home.

In 1981, Thomson Holidays in the United Kingdom submitted the first Business to Business (B2B) electronic transition using online technology: "Any holiday with a number in the company's holiday brochures can be booked through Colin Palmer, commercial director of Thomson, says that there are agents in the system."<sup>78</sup> Thomson Holidays used TRACS technology (Thomson Reservation and Administration Control System), which was built on a large-scale IBM 370/158. computer system, with the Rediffusion minicomputer acting as a "Gateway" for accessing the entire booking files in "real time."

1982: As technology advanced, particularly in electronics, the Boston Computer Exchange established the first eCommerce platforms. Charles M. Stack introduced Book Stacks Unlimited, an online bookstore,

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<sup>77</sup> Michael Aldrich, History of Information, available at:  
<https://www.historyofinformation.com/detail.php?entryid-4528> (Last visited on May,11 2024)

<sup>78</sup> Colin Palmer, Thomson Holidays, available at  
<https://web.archive.org/web/20110910040550/http://www.aldrcharchive.com/BC/downloads/Thomson.pdf>  
(Last visited on April 09, 2021).

In 1992, propelling the online business to new heights. It was one of the first online shopping sites to emerge at the time.

March Andreessen and Jim Clark introduced Netscape Navigator as a web browser tool in 1994. It was used with the Windows operating system.

Amazon and eBay were founded in 1995, marking an iconic moment in eCommerce history. Jeff Bezos founded Amazon, and Pierre Omidyar launched eBay.

1998: PayPal launched the first eCommerce payment system in 1998 as a tool for making money transfers.

1999: Alibaba launched its online shopping platform with more than \$25 million in capital. It eventually evolved into an eCommerce behemoth. Google AdWords, the first online advertising tool, was launched in 2000 to assist retailers in utilizing the pay-perclick (PPC) context.

2005 to 2009 Over the course of four years, eCommerce evolved in the following ways: Amazon Prime membership was launched

in 2005, allowing customers to receive free two-day shipping for an annual fee. Etsy was founded in 2005 to allow small and medium-sized retailers to sell products online. 2005: Square, Inc. launches as an app-based service. In 2005, Eddie Machaalani and Mitchell Harper launched BigCommerce, an online storefront platform. The years saw massive development in the field of eCommerce, including:

In 2011: Google launches its online wallet payment app. It also launch One of Facebook's first moves to launch sponsored stories for advertising.

In 2014: Apple introduced Apple Pay, an online payment application Jet.com, an online shopping portal.

2017: Instagram launches shoppable tags, allowing users to sell directly from the social media platform.

**2017 to present.**



Significant reforms that have occurred in the E-Commerce between these years include:

- Large retailers are encouraged to sell online
- Small businesses have grown, with local sellers now operating on social media platforms.
- Operational costs in the sector have decreased
- Parcel delivery costs have risen significantly as the E- Commerce industry has grown.
- Several eCommerce marketplaces have appeared, allowing more sellers to sell online.
- Logistics has evolved as a result of the introduction of automation and artificial intelligence.
- Social media has evolved into a tool for driving sales and marketing brands. Sellers also sell through social media channels such as Facebook and Instagram.
- Customers' purchasing habits have changed significantly.
- The COVID-19 pandemic has had an impact on purchasing decisions, and the majority of users are switching to
- Sellers are adopting an multichannel selling strategy, which aims to provide users with a consistent shopping experience across multiple media channels.

### **3.7)Country with largest E-Commerce**

**3.7.1) China**-China is without a doubt the leader in this domain, and e-commerce is one of the most important aspects of the global economy. China is far ahead of any other nation in the global e-commerce market share, holding 26.07% of the total with \$1,538 billion in online sales in 2022. A few dominant platforms, like Taobao, JD.com, and Douyin, control the majority of China's e-commerce market. These companies have expanded and innovated their offerings to cater to the shifting demands and tastes of online shoppers.

### **3.7.2) USA**

With online sales totaling \$875 billion, or 14.83% of the market, the United States is ranked second globally in the e-commerce sector. With a vast array of goods and services for customers, e-commerce behemoths like Amazon, eBay, and Walmart have made a name for themselves as market leaders. The US has a high internet penetration rate (91.8% in 2023), which is one of the primary reasons for the success of e-commerce in the country. This indicates that over 311 million Americans have access to online shopping sites and are able to quickly compare the features, costs, and reviews of various products. The sophisticated infrastructure for delivery and logistics, which permits quick and dependable cross-country shipping of goods, is another factor. Additionally, the US has a robust legal and regulatory system that shields consumers and sellers from unfair competition, fraud, and privacy violations.

### **3.7.3) Japan**

In Japan, the value of online transactions reached \$241 billion, accounting for 4.08% of the global market share. This indicates that the e-commerce sector is booming there. Japanese consumers can access a vast array of goods and services through the nation's well-established e-commerce sites, including Amazon, Rakuten, and Mercari. These platforms facilitate quick and simple online shopping along with a range of delivery and payment choices.

### **3.7.4) Germany**

Germany is the world's second-largest e-commerce market, with \$148 billion in sales made there in 2022—2.51% market share. To satisfy the needs of the German market, the nation is home to a wide range of e-commerce platforms that provide various goods and services. Among the most well-known ones are Amazon, eBay, and Otto, all of which have made a name for themselves as reputable and trustworthy internet merchants in Germany.

### **3.7.5) UK**

E-commerce, which generated \$143 billion in online sales in 2022 and accounted for 2.42% of the global e-commerce market share, is one of the most dynamic and thriving sectors in the United Kingdom. Three major platforms, Amazon, eBay, and Asos, dominate the UK e-commerce market. They serve different online consumer segments and provide a wide range of goods and services, including electronics, books, clothes, and entertainment. These platforms have developed a devoted following of users as well as a solid brand recognition in the UK and other countries.

### **3.7.6) South Korea**

As more people choose to shop online for convenience and variety, the e-commerce sector in South Korea has grown significantly in recent years. Based on the most recent data, the nation's online sales volume was \$118 billion, or 2.00% of the global market share. G-Market, 11Street, and Auctio.co are a few of the top e-commerce sites in South Korea; they provide a large selection of goods and services along with intuitive interfaces and quick delivery choices.

### **3.7.7) India**

E-commerce is one of the industries in India that is expanding the fastest, with a notable surge in online sales in the last few years. In 2022, the e-commerce market in India was valued at \$97 billion, representing 1.64% of the global market share. Leading ecommerce sites like Amazon, Flipkart, and Meesho have contributed to this growth by meeting the varied needs and preferences of Indian customers. Millions of Indians can now shop more conveniently and easily online thanks to these platforms, which provide a wide range of goods and services, from groceries and education to electronics and fashion.<sup>79</sup>

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<sup>79</sup> Max Freedman, The 10 Largest E-Commerce Markets in the World by country, Apr 21, 2023

### **3.8) The MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT,1969**

#### **3.8.1) Historical Background Of The Act:**

The nation's first anti-trust law was the Monopolies and Restrictive Trade Practices Act (MRTP Act), passed in 1969. On June 1st, 1970, the MRTP Act went into force with the goal of preventing the concentration of wealth in the hands of a small number of individuals.

It also prohibited actions that are detrimental to the general public, like monopolistic as well as biased actions. Articles 38 and 39 of the Indian Constitution's Directive Principles of State Policy, which stipulate that the state must uphold certain policy principles and ensure a social order for the advancement of public welfare, served as the foundation for the MRTP Act when it was implemented in 1969. The MRTP Act came about as a result of the three studies mentioned below. The first was a study carried out by a committee led by R.K. Hazari that examined the industrial licensing.<sup>80</sup>

concluded that the licensing system's operation had led to the disproportionate growth of some business houses in India. A team led by Professor P.C. Mahalanobis carried out the second study on the levels and distribution of income in the nation. The assessment of the committee states that the wealthiest 10% of the population in India account for as much as 40% of the country's revenue. The committee also emphasized that the nation's planned economy model was contributing to the growth of large corporations and pushed for the collection of comprehensive data on the different aspects of economic power.<sup>81</sup>Overseeing the government-appointed Monopolies Inquiry was K.C. Das Gupta Commission (MIC), which was founded in April 1964, completed the third investigation.procedure is based on the Industrial (Development and Regulation) Act of 1951.

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<sup>80</sup> ECPW, "Industrial Planning and Licensing Policy. Summary of the Hazari Report", 2 Economic and Political Weekly 746-748 (1967)

<sup>81</sup> Mahalanobis Committee Report on Distribution and Levels of Income, Government of India, 1964: Pradeep S. Mehta (eds). Evolution of Competition Laws and their Enforcement: A PolITICAL Economy Perspective 75 (Routledge Taylor & Francis Group London and New York)

According to the October 1965 report submitted by the MIC, there was a concentration of economic power it was charged with examining the extent and effects of private sector power concentration, as well as the existence of trade restrictions and monopolies in important economic activity areas concerning both industry and product. MIC developed a measure to regulate the economy's operations in light of its findings in order to prevent the concentration of economic dominance. Along with prohibiting monopolistic and restrictive business practices that are detrimental to the public interest, the measure also contains provisions for controlling monopolies. The principal aim of the MRTP Act was to provide safeguards against trade practices that were monopolistic, restrictive, or unfair.

The MRTP Act was subsequently amended in 1974, 1980, 1982, 1984, 1986, 1988, and 1991. The recommendations of the Sachar Committee had an impact on the amendments that were made in 1992 and 1994. In addition to highlighting the problem of consumers being sold fake deals, the committee recognized the importance of business models that include sales and advertisements. Economic reforms were implemented in India during 1990s and 1991, which paved the way for globalization, privatization, and liberalization. These modifications made it clear that a new competition law was required. In compliance with the World Trade Organization's (WTO) 1999 guidelines. The government formed a high-level committee whose main objective was to examine the nation's competition laws. The Raghavan Committee was founded in 1999 following the publication of the WTO guidelines.

Suggested MRTP Commission be dissolved and a competition commission be established in light of the evolving socioeconomic landscape. As a result, a fresh draft of a competition law was created and submitted to the government in November 2000. Following that, the bill pertaining to competition was brought before parliament and ultimately approved, leading to the December 2002 adoption of the Competition Act. As a consequence, the Competition Act of 2002 superseded the MRTP Act. Established by the Competition Act, the Competition Commission of India (CCI) is a quasijudicial body that makes decisions in accordance with the rule of law. The CCI can gather evidence with the same authority as a civil court. Abuse of dominant position, combinations, and anti-competitive agreements

are the three main pillars that underpin the Act. Under the jurisdiction of the CCI, these components offer the framework for controlling competition in India.

### **3.8.2)MRTP'S Evolution As A Competition Law**

The Monopolies and Restrictive Trade Practices (MRTP) Act, enacted by India in 1969, preceded the Glasnost and globalization movements of the early 1990s. It aimed to prevent the concentration of economic power at the expense of the general populace, reflecting socialist ideals outlined in its preamble. The MRTP Act was the outcome of three investigations conducted by separate committees, which are detailed as follows

- The R. K. Hazari Committee, established under the Industries (Development and Regulation) Act of 1951, was the first investigative body to examine the licensing system. Its findings revealed that the operation of this system led to the disproportionate expansion of some of India's largest corporations. Additionally, Hazari's report expanded its scope beyond licensing policy to emphasize industrial planning as its primary concern, rather than just licensing.<sup>82</sup>
- The Mahalanobis Committee, formed by the Indian government in 1960 to tackle the increasing income inequalities, observed in its report that large business conglomerates were expanding due to the government's planned economy model. The committee emphasized the need to gather data on various aspects of economic power concern.<sup>83</sup>
- The Monopolies Inquiry Commission, established by the government in 1965 under the Commission of Inquiry Act of 1952, had several objectives: to examine the extent and effects of economic power concentration in private hands, investigate monopolistic and restrictive practices in key economic sectors, and propose

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<sup>82</sup> ECPW, Industrial Planning and Licensing Policy: Summary of the Hazari Report 2 Economic and Political Weekly 746-148 (1967)

<sup>83</sup> Mahalanobis Committee Report on Distribution and Levels of Income. Government of India, 1964, Pradeep S. Mehta (eds), Evolution of Competition Laws and their Enforcement: A Political Economy Perspective 75 (Routledge Taylor & Francis Group London and New York).

legislative and other measures to address these issues. In October 1965, the Commission found evidence of significant economic power concentration across product and industry lines due to widespread monopolistic and restrictive trade practices, with a few corporate entities controlling numerous enterprises. The focus of these inquiries was on devising effective strategies to curb the growth of monopolies and prohibit anti-competitive practices, ultimately leading to the recommendation and enactment of the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act), which came into force on June 1, 1970, following revisions by a Parliamentary Committee.<sup>84</sup>

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<sup>84</sup> Virendra Kumar, 8 Committees and Commissions of India: 1947-73115 (Concept Publishing Company 1979)

## CHAPTER 4

# JUDICIAL APPROACH OF CCI IN REGULATING E-COMMERCE

### 4.1) CCI's Enforcement Evolution in the E-commerce Sector

About the time that CCI published its E-Com Report, it looked into claims that online travel agencies and e-commerce shopping platforms engaged in anti-competitive behavior. The competitive effects in the market for the "sale of travel and travel related services" were examined by CCI when analyzing MakeMyTrip's (MMT) acquisition of Go-Ibibo<sup>85</sup> in October 2016. Notably, in doing so, CCI did not make a distinction between offline and online travel booking methods. Rather, it discovered that travel channels that were primarily offline presented "significant competitive constraints" to online travel agencies ('OTAs') like MMT. But a few years later, the CCI, in its preliminary order, looked into MMT's actions in the relevant market for "online intermediation services for booking of hotels in India" in response to allegations<sup>86</sup> regarding excessive discounts, exclusivity, and parity clauses imposed by MMT. CCI held that OTAs have become a recognized channel for hotel bookings in the interim, and hotel operators now view OTAs as a separate mode of distribution, marking a departure from its previous ruling. Without sacrificing customer reach, these could not be seen as equivalent to offline modes or direct sales.

The CCI also ordered an investigation into Flipkart and Amazon earlier this year in Delhi *Vyapar Mahasangh v. Flipkart & Amazon*<sup>87</sup>, in response to claims of deep discounting, preferential listing, private labels, and exclusive tie-ups (selling mobile phones on a single shopping platform).

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<sup>85</sup> *ibid*

<sup>86</sup> *Federation of Hotel & Restaurant Associations of India v. MakeMyTrip India Pvt. Ltd*, Case No. 14 of 2019

<sup>87</sup> *ibid*



The investigation revealed that both companies exercised market power in their respective markets, creating an ecosystem in which their actions may have a noticeably negative impact on competition. Based on this information, the CCI instructed the office of the director general (the "DG"), its investigative branch, to launch an inquiry.<sup>88</sup>

In *All India Online Vendors Association v. Flipkart*, the CCI held that there were several participants in the online marketplace platforms. This decision, too, deviates from its previous conclusions regarding a comparable set of allegations. According to CCI, no single player would be able to hold a dominant position in the relevant market at this point in the market's evolution, despite Flipkart's size and resources being substantial.

#### **4.2) CCI's Expedited Approach to tackle violations in the E-Commerce Industry: In the light of the Investigation against Amazon & Flipkart Case**

The CCI issued an order in January of last year ordering an investigation into the allegations made against Amazon Seller Services Pvt. Ltd. (Amazon) and Flipkart Internet Services Pvt. Ltd. (Flipkart).<sup>88</sup> In a document submitted to the CCI, Delhi Vyapar Mahasangh (DVM), a group of traders from multiple Micro, Small, and Medium-Sized Enterprises (MSMEs) that depend on the sale of smartphones and related accessories, raised these accusations.

Predatory pricing, exclusive collaborations with smartphone manufacturers, special treatment for particular sellers—including the sale of their private label brands and steep discounts—were among the accusations submitted. Additionally, the report claimed that in order to keep some products priced below cost, Amazon and Flipkart engaged in crosspromotion on their respective platforms.<sup>89</sup> The CCI believed that the evidence presented to it by the informant—screenshots of messages offering specific smartphones exclusively on the OP's platforms and emails indicating preferential agreements with

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<sup>88</sup> Karnataka High Court has stayed CCI's order directing the DG to investigate the matter

<sup>89</sup> Amazon & Flipkart Case, Competition Commission of India, Case No. 40 of 2019.(India)

specific sellers—was substantial enough to warrant an investigation. Amazon filed a writ case with the Karnataka High Court after being upset by this ruling.

Amazon argued in court that there was insufficient prima facie evidence to support the CCI's order to launch an investigation, which is required in order to commence an investigation pursuant to section 26(1) of the Competition Act, 2002 (Act). It was further argued that CCI could not conduct a parallel investigation into Amazon since the Enforcement Directorate is already looking into the company for possible FDI norm violations under the Foreign Exchange Management Act of 1999. The Supreme Court's ruling in CCI vs. Bharti Airtel & Ors, wherein the ED's probe was prompted by several petitions submitted by the Confederation of All India Traders (CAIT) to the Delhi High Court and the Rajasthan High Court, provided credence to this argument.

As an affiliate of CAIT, the informant, DVM, was accused of filing the information with the CCI with malicious intent because Amazon was already the subject of an investigation by a specialized regulatory body and the CCI's collateral investigation was unjust. The High Court declared that the CCI had invited Amazon to comment in an information filed by the All India Online Vendors Association (AIOVA) against Flipkart, but had neglected to do so in this particular case. As a result, the order was issued without giving Amazon a chance to be heard. Based on the previously mentioned arguments and reasoning, the Karnataka High Court decided in favour of Amazon and issued a temporary stay of the CCI-directed DG's investigation. In response to this ruling, Flipkart also petitioned the Karnataka High Court to halt the DG's investigation.

The Karnataka High Court's order to halt the CCI's investigation into Amazon and Flipkart was challenged by the CCI to the Supreme Court in October of last year. The Karnataka High Court will now hear the case again, per the Supreme Court's directive. The Karnataka High Court scheduled a joint hearing for Flipkart's and Amazon's petition in January of this year. CCI, DVM, and CAIT were named as respondents in that case. The Karnataka High Court heard arguments from all parties during the first half of this year, and in June 2021, it dismissed the petitions from Amazon and Flipkart, permitting the CCI to proceed with its investigation. First, regarding an order issued in accordance with section 26(1) of the act.

Considering the rulings in *Competition Commission of India v. Bharti Airtel Ltd. and Ors.*<sup>90</sup> (Bharti Airtel case) and *Competition Commission of India v. Steel Authority of India Ltd.*<sup>91</sup> (SAIL case) by the Supreme Court, the Karnataka High Court ruled that these orders from the CCI are administrative directives to its investigation wing under the DG, and that there is no requirement in the provision for notifying any party involved before commencing an investigation. Second, the information filed by DVM and the evidence presented were examined by the court, and both were deemed sufficient to start a preliminary inquiry. The CCI, according to the court, carefully considered each of the allegations in the information under various headings and used its judgment before approving the investigation order. The writ petition filed by Amazon and Flipkart was dismissed by the Karnataka High Court in an order<sup>[iv]</sup> that allowed CCI to continue its investigation.

Amazon and Flipkart challenged the Karnataka High Court's ruling enabling the CCI to proceed with its investigation in a petition filed there because they were offended by the ruling made by the single bench of the court. A division bench made up of Judges Satish Chandra Sharma and Nataraj Rangaswamy dismissed the petition on July 23, 2021, declaring it to be "devoid of merits and substance." This decision, they believed, would affect the Indian e-commerce sector as a whole. The petition was dismissed by the bench because they could not find any justification to interfere with the CCI's investigation.

Amazon and Flipkart have filed a case with the Supreme Court contesting this Karnataka High Court ruling.<sup>91</sup> Nevertheless, their endeavor proved futile as well, since the Supreme Court declined to intervene in the High Court's directive permitting the CCI to proceed with the inquiry.

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<sup>90</sup> *Competition Commission of India v. Bharti Airtel Ltd. and Ors.* Civil Appeal No. 11843 OF 2018, SC.

<sup>91</sup> *Competition Commission of India v. Steel Authority of India Ltd.* Civil Appeal No.7779 OF 2010, SC.

<sup>91</sup> *Amazon Seller Services Private Limited v. Competition Commission of India & Ors.* Writ Petition No. 3363 of 2020.

**4.3) Ashish Ahuja v. Snapdeal Case**-In this case the Competition Commission of India (CCI) addressed whether online and offline distribution channels constitute separate relevant markets or are part of the same market.<sup>92</sup>The 2014 CCI dismissal order provided much-needed clarity. The CCI determined that online and offline markets are not separate relevant markets but rather different distribution channels for the same product—in this case, pen drives. The CCI noted that customers compare options and make decisions based on perceived differences in discounts and shopping experiences between offline and online marketplaces. If prices in the online market rise sharply, customers are likely to switch to the offline market, and vice versa.The 2017 CCI approval order in the MakeMyTrip (MMT)/Ibibo combination case followed the same approach. It defined the relevant market as the "sale of travel and travel-related services," noting that all travel channels operate both offline and online. The CCI observed that customers can easily switch between these two modes on the demand side.

#### **4.4)Shamsher Kataria v. Honda Siels Cars India Ltd. case**

Just a year after the mentioned order, the Competition Commission of India (CCI) addressed a situation where 14 car manufacturers engaged Original Equipment Manufacturers (OEMs), who served as authorized spare parts dealers for these manufacturers.<sup>93</sup>The OEMs restricted access to spare parts, preventing non-authorized independent repairers from obtaining them. The CCI found the car manufacturers liable under Sections 3 and 4 of the Competition Act, 2002. This ruling contrasted with the decision in the Ashish Ahuja case of 2014. In this instance, the CCI did not take into account the intellectual property and goodwill of the car manufacturers and failed to analyze the case in accordance with the Standard Development Agreement (SDA).The defense for engaging authorized online partners or distributors lies in the adoption of the SDA. As SanDisk did not meet the qualifications to adopt the SDA, Ashish Ahuja had the right to deal with SanDisk products.

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<sup>92</sup> Tanisha Mishra, Ashish Ahuja v. Snapdeal, WorldPress, 2014(India)

<sup>93</sup> Shri Shamsher Kataria vs Honda Siel Cars India Ltd. & Ors.,case number,03/2011 of 25/08/2014

#### **4.5) Vyapar Mahasangh v. Flipkart Case**

the Competition Commission of India (CCI) differentiated between online marketplaces and brick-and-mortar retail outlets, categorizing them into separate relevant markets.<sup>94</sup>The CCI's rationale for this distinction was rooted in the dominance of Amazon and Flipkart in the online retail sector in India, particularly for product categories like smart phones, where they served as the primary distribution channel.

#### **4.6) Lifestyle Equities v. Amazon Case**

In this case the perspective was reinforced that online platforms possess distinct characteristics, notably cross-sided network effects.<sup>95</sup>This implies that sellers are inclined to list products on a marketplace with a large number of buyers, and vice versa. Given that the allegations in the present case revolved around the online sale and purchase of fashion merchandise, the Competition Commission of India (CCI) defined the relevant market as the "market for services provided by online platforms for selling fashion merchandise in India." However, the CCI explicitly noted that the delineation of the relevant market is a dynamic process that evolves based on market realities. A review of recent CCI orders reveals a tendency towards narrower delineation of the relevant market, particularly concerning online platforms for specific product/service categories. It's essential to note that the CCI's stance in the Delhi Vyapar Mahasangh and Lifestyle Equities cases was preliminary, and the former case is currently under investigation by the Director General. Therefore, whether the CCI's delineation of the relevant market (as outlined in its preliminary order) will be supported by empirical data remains to be seen.

#### **4.7) Overview Of Provisions Of The Competition Act with Judicial Approach**

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<sup>94</sup> *ibid*

<sup>95</sup> Lifestyle Equities v. Amazon Case , Case ID: 2022/0108, Competition Commission of India, 6 March 2024

#### **4.7.1)RELATING TO ANTI-COMPETITIVE AGREEMENTS**

Section 3(1) of the Competition Act prohibits agreements among enterprises, individuals, or associations concerning the production, supply, distribution, storage, or control of goods or provision of services, if they cause or are likely to cause a significant adverse impact on competition within India. Additionally, according to Section 3(2), all such agreements are considered void. Although the term "appreciable adverse effect on competition" is not explicitly defined in the Competition Act, Section 19(3) outlines specific factors to consider when determining if an agreement falls under this category

**4.7.2)Horizontal Agreements** -Under Section 3(3) of the Competition Act, certain horizontal agreements<sup>96</sup>,including cartels, are presumed to have an appreciable adverse effect on competition. However, this presumption can be rebutted and the burden of proof lies with the accused party. While arguments highlighting the counter benefits of agreements could potentially challenge this presumption, it may be particularly difficult in the case of cartels.<sup>97</sup>Additionally, the Competition Act<sup>98</sup> provides an exception to this presumption for horizontal agreements formed through joint ventures.

Such agreements are presumed not to have an appreciable adverse effect on competition if they enhance efficiency in production, supply, distribution, storage, acquisition, or control of goods or provision of services.

**4.7.3)Vertical Agreements-** Section 3(4) of the Competition Act prohibits vertical agreements, which are agreements between enterprises operating at different levels of the production chain in various markets for goods or services. These agreements are not allowed if they cause or are likely to cause a significant adverse impact on competition in

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<sup>96</sup> Pursuant to Section 3(3) of the Competition Act, horizontal agreements, i.e., agreements entered into between enterprises or persons engaged in identical or similar trade of goods or provision of services, including cartels,

<sup>97</sup> In the case of Uniglobe Mod Travels Pvt. Ltd. v. Travel Agents Association of India.& Ors. MANU/CO/0052/2011(india)

<sup>98</sup> ibid

India. Examples of such agreements include tie-in arrangements,<sup>99</sup> exclusive supply agreements, exclusive distribution agreements, refusals to deal, and resale price maintenance,<sup>100</sup><sup>101</sup> provided that they lead to or are likely to lead to a significant adverse impact on competition in India. The assessment standard for these agreements aligns with the "rule of reason" approach, which involves weighing the negative and positive effects on competition to determine whether the agreement has or is likely to have a significant adverse impact on competition. The classification of "resale price maintenance" as subject to "rule of reason" analysis follows the American approach, diverging from European competition law, where "resale price maintenance" is considered a "hardcore restriction" and presumed to restrict competition.<sup>102</sup>

#### **4.8) Abuse of dominant position- Concept**

Abuse is defined as an enterprise or collection of enterprises that takes advantage of their current position in a significant market in an exploitative or exclusionary manner. A detailed list of behaviors that constitute abuse of a dominant position and the situations in which they are prohibited is provided by the Act. Only when an endeavor seeks to profit from a situation that exists in the relevant Indian market will such practices be deemed to be misused. Abuse of a dominant position is determined by the specific types of acts that a prevailing undertaking commits. The law prohibits such actions. Any abuse of a dominant position by a prevailing firm, as specified by the Act, will not be accepted.

According to the explanation attached to Section 4 of the Competition Act, 2002, a dominant position in a significant Indian market refers to an enterprise's ability to operate

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<sup>99</sup> Tie-in arrangements" include any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods. See Explanation to § 3(4), Competition Act.

<sup>100</sup> Exclusive supply agreements" include any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person. See Explanation to § 3(4), Competition Act.

<sup>101</sup> , European Union, 'Guidelines on Vertical Restraints', 2010 (2010/C 130/01).

independently of major players who have won the market and to sway consumers, competitors, or the market in favor of the enterprise.<sup>102</sup>

#### **4.8.1) Competition Commission Of India Abuse Of Dominant Position Case**

Case No. 30 of 2023

Buchi Ramarao Valury V/S Covai Property Centre (India) Private Limited (Covai)

Order under Section 26(2) of the Competition Act, 2000

1) Mr. Buchi Ramarao Valury has filed a complaint against Covai Property Centre (India) Private Limited (Covai Centre), Covai Senior Citizen Services Pvt. Ltd. (Covai Services), and Ozone Urbana Infra Developers Private Limited (Ozone Urbana Developers) for violating Sections 3 and 4 of the Competition Act, 2002.<sup>103</sup><sup>104</sup> These companies are collectively referred to as the "Opposite Parties" in the complaint

2) The person filing the complaint resides in "Urbana Irene" within the Ozone Urbana Township in Kannamangala, Bengaluru Rural. OP-1 is a private limited company based in Coimbatore, incorporated under the Companies Act, 1956.<sup>105</sup>

It offers consultancy services and care for designing, building, and operating retirement communities. OP-2, a subsidiary or assignee of OP-1, is the authorized service provider for Project "Urbana Irene." OP-3 is also a company incorporated under the Companies Act, 1956,<sup>106</sup> and serves as the developer of "Urbana Irene" within the Ozone Urbana Township, situated at NH 44 in Kannamangala, Karnatak.

3) The person making the complaint bought a two-bedroom apartment with unit number 609 on the sixth floor of the "B" Block within the multi-block residential complex known

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<sup>102</sup> *ibid*

<sup>103</sup> Deyasini Chakrabarti, Abuse Of Dominant Position Under Competition Act,

<sup>104</sup> [https://www.cci.gov.in/sites/default/files/advocacy\\_booklet\\_document/AOD.pdf](https://www.cci.gov.in/sites/default/files/advocacy_booklet_document/AOD.pdf), May 19, 2020

<sup>105</sup> Jason Gudofsky, Evangelia Litsa Kriaris and Lucian Vital, "Abuse of Joint Dominance: Is the Cure Worse than the Disease?" (Canadian Bar Association-2010 Annual Competition Law Conference, 2010) <sup>106</sup>

*ibid*



as "Urbana Irene." They signed an agreement for sale on July 10, 2018, with OP-3 as the promoter and OP-1 as the confirming party.<sup>106</sup>

According to the complaint, due to an alleged tie-in arrangement between OP-1 and OP-3, the complainant was compelled to accept catering and housekeeping services provided by OP-2. The service agreement with OP-2 was signed on the same day as the agreement for sale.

4)According to the complainant, clause "I" of the sales agreement designates OP-1 as a confirming party responsible for providing necessary services, thereby restricting the complainant's choice in selecting their service provider. Clause "N" mandates the complainant to enter into a service agreement with the designated service provider and adhere to its terms and conditions. Additionally, clause 12 of the sales agreement obligates the complainant to timely pay total maintenance and service charges as determined and billed by OP-1 or its nominees/assignees.

5)The unilateral changes in the allocation of housekeeping staff and the increase in Monthly Maintenance Charges (MMC)<sup>107108</sup> are alleged to be a result of abuse of dominant position.<sup>109110</sup>

It is claimed that since OP-2 is the sole service provider, it unilaterally announces cost increases without validation and utilizes them as grounds for raising MMC and reducing the number of housekeeping staff. Consequently, the complainant is left with no alternative in the matter.

6)According to the complainant, due to the alleged tie-in arrangement between OP-1 and OP-3, they are compelled to sign a separate service agreement with OP-1 (identified as the

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<sup>106</sup> Gunjan Sinha, Companies Act 1956: Annual Compliance in India ,Indiabriefing, February 6, 2018

<sup>107</sup> Joe, Monthly maintenance charge (mmc) of apartments, 07 September

<sup>108</sup> ,<https://www.lawyersclubindia.com/forum/monthly-maintenance-charge-mmc-of-apartments212465.asp>, (last visited on May 14,2024)

<sup>109</sup> Cyril Shroff and Avaantika Kakkar, India: Abuse of Dominance', The Asia Pacific Antitrust Review

<sup>110</sup> , (19 March 2019) <<https://globalcompetitionreview.com/insight/the-asia-pacific-antitrust-review2019/1188990/india-abuse-of-dominance>> (last visited on May 14, 2024)

confirming party in the sale agreement) and its nominee, OP-2. The service agreement with OP-2 requires the complainant to pay for amenities outlined Annexure 1.

7) Although the service agreement includes provisions for participative management through a Residents Committee, the complainant alleges that OP-2 disregards this practice and unilaterally raises monthly maintenance and catering costs without providing data or opportunity for discussion.

The complainant asserts that OP-1 is abusing its dominant position by arbitrarily increasing service charges. Supporting evidence includes bills for Monthly Maintenance Charges (MMC)<sup>111</sup> for February, April, and June 2023, which indicate an increase from Rs. 10,892 in February to Rs. 11,294 in April and Rs. 11,343.28 in June. The complainant alleges an approximate 1.0% monthly increase, significantly exceeding the price index and potentially burdening senior citizens with unaffordable bills.

8) The residents are depicted as being under the control of OP-2, who has occupied the first floors of A and B Blocks within the apartment complex, ostensibly to provide essential services to senior citizens. It is argued that OP-1 cannot continue indefinitely as a service provider merely by occupying the first floor of the apartment complex. The Residents' Committee or Association, as appropriate, should have the ultimate authority to determine contract terms, including modifying, adding, or removing terms and conditions, as well as the power to cancel a contract and issue a new one to the current service provider or appoint a new one. The complainant has also requested interim relief under Section 33 of the Act, seeking the formation of a residents' committee to oversee and regulate all aspects of the services, including their extent, type, and rates.

The Commission reviewed the matter during its regular meeting on 07.02.2024 and decided to issue an appropriate order in due course. Upon reviewing the information and publicly available materials, the Commission notes that the issue at hand concerns the sale of residential units/apartments in a project developed by Ozone Urbana Developers. As per the terms of the sale and service agreements, Ozone Urbana Developers is the outright

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<sup>111</sup> *ibid*

owner of Urbana Irene and has engaged Covai Centre for various purposes, including design, development, and provision of services and care to senior citizens. Additionally, Covai Services has been authorized to undertake this work.

10)The Commission observes that the complainant is primarily aggrieved by being compelled to accept catering and housekeeping services from Covai Services, as stipulated in the agreements for sale and service entered into on 10.07.2018.

Additionally, the complainant appears to be distressed by unilateral changes in the allocation of housekeeping staff and the increase in Monthly Maintenance Charges (MMC), which are alleged to result from anti-competitive behavior by the Opposite Parties. To analyze the case under Section 4 of the Act, the first step is to determine whether the Opposite Parties qualify as 'enterprises'.

Given that the Opposite Parties engage in commercial activities, they indeed fall within the definition of 'enterprise' as per Section 2(h) of the Act. Subsequently, it is necessary to delineate an appropriate relevant market, as per Section 2(r) of the Act, which includes both the relevant product market and relevant geographic market. The next stage involves assessing the dominance of the Opposite Party in the delineated relevant market, considering factors listed under Section 19(4) of the Act. Once the dominance of the Opposite Party is established, the final step is to analyze the allegations of abuse of dominance in accordance with the provisions of Section 4 of the Act.<sup>112</sup>

11)Regarding the relevant geographic market, the Commission has considered the project's location in Kannamangala, Taluka-Devanahalli, Bengaluru, Karnataka, which falls within the Bangalore Metropolitan Region.

The Commission distinguishes the conditions of competition within this region, taking into account factors such as the level of development, real estate costs, connectivity to the state

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<sup>112</sup> Rizvi, Zisha, Decrypting the Concept of Abuse of Dominant Market Position: Trends in India and EU (February 26, 2020). Available at SSRN: <https://ssrn.com/abstract=3578864> or <http://dx.doi.org/10.2139/ssrn.3578864>. ( Last visited on 25 April,2024)

capital, transport infrastructure, regulatory authorities, and local/municipal regulations, which differ from neighboring

areas. Therefore, the Commission considers the relevant geographic market in this case to be the 'Bangalore Metropolitan Region.'

Based on this assessment, the Commission views the relevant market in this case as 'the market for the provision of services for the development and sale of apartments to cater to the needs of senior citizens in the Bangalore Metropolitan Region.'

12) The Commission observes that in the Bangalore Metropolitan Region, there are numerous other real estate developers besides OP-3 offering similar services, such as developing and selling apartments for senior citizens' needs.

These developers, including TATA Housing Development Company Ltd., Sushruta Vishranthi Dhama Ltd., Columbia Pacific Communities, M/s Bahri Estates Pvt. Ltd., Sukhshanti Retirement Homes, Parkside Homes at Brigade Orchards, and Vedaanta@ Godrej E-City, impose competitive constraints on OP-3.

Therefore, OP-3 does not seem to possess a dominant position that would allow it to operate independently of competitive forces in the relevant market<sup>113</sup>delineated above.

13)The complainant has alleged that by appointing Covai Services as the service provider for Urbana Irene allottees, a tie-in arrangement has been imposed on them, in violation of Section 3(4) of the Act. The Commission notes that for Section 3(4) of the Act to apply, the entities involved must operate at different stages or levels of the production chain in different markets regarding the production, supply, distribution, storage, sale, or price of goods or services. Furthermore, the Commission observes that the alleged agreement in contravention of Section 3(4) of the Act is between Urbana Developers and the complainant, who is the owner of the residential flat, i.e., the end consumer.

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<sup>113</sup> Viktoria H.S.E. Robertson, The Relevant Market in Competition Law: A Legal Concept, Journal of Antitrust Enforcement, Vol. 7, 2019, pages 158-176, SSRN, 15 Feb 2019

As such, since the impugned agreement is between an enterprise and an end consumer, it does not fall within the scope of Section 3(4) of the Act. This same principle was applied in a previous case titled 'South City Group Housing Apartment Owners Association and Larsen & Toubro Ltd. & another' (Case No. 49 of 2011)

14)Based on the above, the Commission concludes that there is no prima facie case, and the filed Information is directed to be closed immediately under Section 26(2) of the Act. Consequently, there is no basis for granting the reliefs sought under Section 33 of the Act, and these requests are also rejected. The Secretary is instructed to communicate this decision to the complainant accordingly.

#### **4.9)Combination under Competition Commission Act 2000**

Under the Competition Act of 2000, "combinations" refer to mergers and acquisitions, as well as other forms of business combinations. These can include mergers, amalgamations, acquisitions of control, and joint ventures among enterprises. The Act regulates combinations to ensure that they do not have an adverse effect on competition within the market.

Enterprises engaging in combinations above specified thresholds are required to notify the Competition Commission of India (CCI) and obtain its approval before proceeding with the combinationThe CCI evaluates these combinations to determine whether they are likely to cause an appreciable adverse effect on competition in the relevant market, and may approve them subject to certain conditions or prohibit them if they are found to significantly harm competition.

##### **4.9.1)Filing Responsibility:**

The acquirer bears the responsibility of notifying others of an acquisition or hostile takeover, as per Regulation 9 of the Combination Regulations. The parties merging or amalgamating shall file a joint notice in the event of a merger or amalgamation. It would be the duty of all parties involved in forming the joint venture to file a notice in the event that one was formed.

#### 4.9.2)Combination Thresholds:

The Competition Act's Section 5 lays out asset and turnover thresholds for businesses and groups that, when exceeded, require them to notify the CCI. The current thresholds are as follows:

<b>THRESHOLDS FOR FILING NOTICE</b>				
<b>Enterprise Level</b>	<b>India</b>	<b>Assets</b>	<b>OR</b>	<b>Turnover</b>
	<b>Worldwide with India nexus</b>	More than INR 2500 crore		More than USD 1.25 billion With at least INR 1250 crore in India
<b>Group Level</b>	<b>India</b>	<b>Assets</b>	<b>OR</b>	<b>Turnover</b>
	<b>Worldwide with India nexus</b>	More than INR 10000 crore	<b>OR</b>	More than INR 30000 crore More than USD 15 billion With at least INR 3750 crore in India

#### 4.9.3)Amount of Fee:

If the notice is filed in Form I, the fee payable is Rs. 20,00,000 (Twenty Lakhs only).If the notice is filed in Form II, the fee payable is Rs. 65,00,000 (Sixty-five lakh only).

#### 4.9.4)Mode of payment:

The fee may be paid either by tendering demand draft or pay order or banker's cheque, payable in favor of the Competition Commission of India (Competition Fund), New Delhi.

Alternatively, payment can be made through Electronic Clearance Service (ECS) by direct remittance to the Competition Commission of India (Competition Fund), Account No. 1988002100187687 with "Punjab National Bank, IFSC: PUNB0198800, MICR: 110024115, Address: 7, Madame Bhikaji Cama Place, New Delhi-110066".

#### 4.9.5)Government Notifications: (Sector Specific Exemptions)

##### 1. Regional Rural Bank Amalgamation:

Section 23A(1) of the Regional Rural Banks Act, 1976 exempted the amalgamation of "Regional Rural Banks"<sup>114</sup> from the Competition Act's sections 5 and 6 on August 10, 2017, with the exemption lasting five years from the date of the official gazette notification.

## **2. Nationalized banks' reconstruction, transfer, and amalgamation:**

The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 exempted all cases of reconstitution, transfer, and amalgamation of nationalized banks from the application of sections 5 and 6 of the Competition Act on August 30, 2017.

This exemption was given for a period of ten years from the date of notification in the official gazette.

## **3) Banking Company, regarding which a notification has been issued by the Central Government in accordance with Section 45 of the 1949 Banking Regulation Act.-**

Sections 5 and 6 of the Competition Act do not apply to a "banking company" whose operations have been suspended under section 45 of the Banking Regulation Act, 1949, for a period of five years following the date of notification in the official gazette, according to a notification from the Central Government dated March 11, 2020.

**4)Combinations involving Central Public Sector Enterprises in the oil & gas sectors:**On November 22, 2017, the Central Government exempted from the application of sections 5 and 6 of the Competition Act all combinations involving Central Public Sector Enterprises including their wholly or partially owned subsidiaries, operating in the oil and gas sectors under the Petroleum Act, 1934,<sup>115</sup> or the Oilfields (Regulation and

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<sup>114</sup> Jasvir Sura, Efficacy of Regional Rural Banks (RRBs) in India: A Conventional Analysis, [https://www.researchgate.net/publication/228265055\\_Efficacy\\_of\\_Regional\\_Rural\\_Banks\\_RRBs\\_in\\_India\\_A\\_Conventional\\_Analysis](https://www.researchgate.net/publication/228265055_Efficacy_of_Regional_Rural_Banks_RRBs_in_India_A_Conventional_Analysis), (Last visited on May 14, 2024)

<sup>115</sup> The Petroleum Act 1934, ACT NO. 30 OF 1934, [https://www.indianemployees.com/actsrules/details/petroleum-act-1934#google\\_vignette](https://www.indianemployees.com/actsrules/details/petroleum-act-1934#google_vignette), (Last visited on May 14, 2024)

Development) Act, 1948, and rules made under these two laws. This exemption was granted for a period of five years from the date of notification in the official gazette.

#### **4.9.6) CCI approves the proposed combination involving Ipca Laboratories Limited Unichem Laboratories Limited (Combination Case No. C-2023/05/1028)**

By order dated July 26, 2023, the Commission authorized the following proposed combination: (a) Purchase of Shares (Pursuant to the Share Purchase Agreement SPA), whereby Ipca Laboratories Approximately 33.38% of Unichem's issued and paid-up equity voting share capital (on a fully diluted basis) will be acquired by Limited (Acquirer). Labs Limited (Unichem/Target) from Seller Dr. Prakash Amrut Mody; (b) Open Offer. Considering that (i) the Acquirer is a listed business and (ii) the Target is acquiring >25% shareholding in the Target pursuant to the SPA, the Acquirer is required to make an open offer for the purchase of equity shares of up to 26% of the Target's equity share capital in accordance with the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. The Proposed Combination<sup>116</sup> is the whole of the Share Purchase and Open Offer. As a result of the Proposed Combination, the Acquirer will ultimately obtain approximately 59.38% of the Target's shareholding. Founded in India, The Acquirer is a publicly traded pharmaceutical company that produces formulations and active pharmaceutical ingredients (API) for a range of therapeutic segments. In India, the Acquirer also produces and markets intermediates and APIs. Furthermore, the Godha Family is the Acquirer's ultimate parent company and exercises ~36.72% of its shareholding in it both directly and indirectly.

The Acquirer Group also conducts business in India's pharmaceutical industry. The Target is a publicly listed pharmaceutical company incorporated in India. Approximately 50.93% of the Target's shares are held directly or indirectly by Dr. Prakash Amrut Mody and his family. The Target is engaged in the worldwide distribution of finished formulations produced under contract, as well as formulations, APIs, and intermediates. The Target is an API manufacturer located in India. The Target does not sell any formulations in India;

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<sup>116</sup> Combination Registration No. C-2015/02/246, Para 12.10  
<[https://www.cci.gov.in/sites/default/files/246\\_44\\_PublicV.pdf](https://www.cci.gov.in/sites/default/files/246_44_PublicV.pdf)> (Last visited on May 14, 2024)



instead, its formulations business is entirely focused on exports. Both broadly and more specifically in the following APIs, the Parties showed Phenylephrine Hydrochloride (PHyd), and (viii) Meloxicam. Further, the Parties also exhibited a vertical relationship between the APIs i.e.

(i) Amlodipine Besylate (ABes)

(ii) Fenofibrate (FFrib)

(iii) Lamotrigine (LTrig)

(iv) Quetiapine Fumarate (QFum) and

(v) Zolpidem Tartrate (ZTar) and their use as inputs in the manufacture of formulations.

The Commission assessed the Proposed Combination in the segments identified by the Parties. The precise definition of the relevant market was not specified, though.

It was observed, based on the Parties' submissions, that the Parties' incremental market shares were negligible in each Relevant API Market (at a more granular level) and in the Broad API Market. In addition, with regard to the vertical relationships, it was observed that the Target's individual market shares in each of the downstream markets were negligible and that other players were present in both the upstream and downstream markets. Moreover, the Parties voluntarily submitted an undertaking under Regulation 19(2) of the Agreement to address any potential competition concerns that may arise as a result of Target's formulations business (given the potential horizontal overlap in formulations manufactured by the Parties and the potential vertical relationship between APIs manufactured by the Acquirer and the formulations manufactured by the Target). According to the Competition Commission<sup>117</sup> of India (Procedure regarding the transaction of business relating to combinations) Regulations, 2011, among other things, Uni chem has committed to refraining from reentering the Indian formulations market for a minimum of 36 months following the closure of the proposed Mixture.

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<sup>117</sup> ibid

## **4.10) UNDERSTANDING RELEVANT MARKETS**

Relevant market has been defined by numerous international legal frameworks, including the Act, UK statutes, European laws, and US antitrust laws; however, it is neither practical nor equitable to limit the definition of "relevant market" to a small number of fictitious definitions. Even courts and other forums for conflict resolution struggle to contain the scope of the idea, and each discussion generates a new, distinct understanding. Due to its origins in economic concepts, the definition of the relevant market under Section 2(r) of the Act is not exhaustive and is likely to vary depending on the unique set of facts in each case. It is clear that the CCI has the sole authority to determine what constitutes the "relevant market." Expressions such as "relevant product market" and "relevant geographic market" necessitate an understanding of legal and economic concepts as well as a thorough examination of copious amounts of data and statistics in order to make a determination.<sup>118</sup> As is common knowledge, a competitive market is one that is relevant. A "relevant product market" and a "relevant geography market" are two more categories into which a relevant market can be separated.

### **4.10.1) Relevant Product Market:**

In simpler terms, a relevant product market refers to two types of interchangeability of goods or services.

Firstly, 'demand-side substitution' occurs when customers can easily switch to alternative goods or services if there is a slight increase in price, resulting in no benefit for the market player.

Secondly, 'supply-side substitution' happens when other market players increase the availability of similar goods or services, mitigating the impact of a price increase. Section 2(t) of the Act defines the 'relevant product market' as a market that includes all products or services that consumers perceive as interchangeable or substitute. This determination is

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<sup>118</sup> Robert O'Donoghue and Jorge Padilla, 'The Law and Economics of Article 102 TFEU' (2014, 2nd edition).

based on factors such as the characteristics of the products or services, their prices, and their intended use.

#### **4.10.2) Relevant Geographical Market:**

To establish a relevant geographical market, it's essential to consider where buyers and sellers are located within the market. The market's geographic boundaries should encompass an area where competitive conditions for products or services are uniform. The market presence can be categorized as local, regional, national, or international, depending on the locations of buyers and sellers. Analyzing the geographic scope of the market provides insights into the competition's nature and extent in that specific area.

Section 2(s) of the Act defines the relevant geographic market as an area where competitive conditions for supplying or demanding goods or services are similar and distinct from neighboring areas. In essence, it refers to a specific geographic region where buying and selling conditions for goods or services are consistently uniform and distinguishable from conditions in nearby areas. This definition aids in delineating market boundaries and extent based on the uniformity of competitive factors in a particular geographic area.<sup>119</sup>

## **CHAPTER 5**

### **MARKET STRUCTURE OF E-COMMERCE PLATFORMS**

#### **5.1) ONLINE MARKETPLACE PLATFORM**

The primary goal of an e-commerce marketplace platform is to streamline the process of connecting buyers and sellers, thereby facilitating the sale of goods and services by thirdparty sellers to consumers. The emergence of comprehensive online marketplaces, such as Flipkart and Amazon, has been driven by numerous online retailers opening their platforms to outside merchants. This expansion aims to reduce search costs through

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<sup>119</sup> shentk,Market Matters: Understanding the Significance of Relevant Markets in Competition Law, LAWYERSCLUBINDIA,[https://www.lawyersclubindia.com/profile.asp?member\\_id=948230](https://www.lawyersclubindia.com/profile.asp?member_id=948230), 23May 2023.

enhanced trust and economies of scale. The landscape is evolving, with new business models leveraging Big Data collection and processing, leading to personalized and cost-effective products and services for customers.<sup>120</sup> Digital marketplaces like Amazon, Flipkart, and Snapdeal adopt a hybrid business model, acting as intermediaries between sellers and buyers while also selling private-label products directly to consumers. Private labels are manufactured by external suppliers but marketed under the platform's brand name.<sup>121</sup> Online marketplace platforms connect multiple user groups, including sellers, buyers, and potentially advertisers, serving as intermediaries for transactions between them. These platforms function as virtual marketplaces where supply and demand converge for transactions, akin to physical markets. Platforms like Amazon and Flipkart provide the infrastructure for e-commerce transactions, serving as the online equivalent of shopping malls.

The term "intermediary" encompasses various entities that facilitate transactions on online platforms, including telecommute service providers, internet service providers, and online marketplaces, among others, as defined under Section 2(w) of the Information Technology Act, 2000. In the case of *Delhi Vyapar Mahasangh v. Flipkart and Amazon*, it was noted that Flipkart and Amazon operate as e-commerce companies using a marketplace model, offering intermediation services to both buyers and sellers.

Sellers on these platforms operate at different stages of the supply chain, making any agreements between platforms and merchants subject to investigation under Section 3(4) of the Act. In essence, traditional brick-and-mortar stores and online e-commerce marketplaces share similarities, with transactions taking place on a virtual platform using computers and networks.

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<sup>120</sup> *Matrimony.com Limited Vs. Google LLC & Others*, Case Numbers 07 & 30 of 2012

<sup>121</sup> Competition Commission of India. "Market study on e-commerce" 31 (2020), available at [https://ccl.gov.in/sites/default/files/whats\\_newdocument/Market-study-on-e-Commerce-in-India.pdf](https://ccl.gov.in/sites/default/files/whats_newdocument/Market-study-on-e-Commerce-in-India.pdf) (Last visited on May 20, 2024).

## 5.2) MULTI-SIDED PLATFORMS

Online marketplaces are multifaceted platforms that facilitate transactions by connecting buyers, sellers, and advertisers. Although multi-sided businesses have existed for a while, it was not until 2002 that they were acknowledged as a unique sector requiring particular consideration from regulators of competition and the legal system. The idea was developed by a number of researchers, though Rochet and Tirole<sup>122</sup> seem to have originated the term "two-sided market." Caillaud and Jullien,<sup>122</sup> as well as Parker and Van Alstyne, use the terms "indirect network effects" and "two-sided network effects," respectively. Digital newspapers and broadcasting stations are examples of multi-sided platforms for example, the relationship between the platform and the user is the first side of the market; users use a search engine to find information, and in exchange, users give the platform (often unknowingly) some data that it can then monetize. Relationships between the platform and other businesses make up the second side of the market.

Businesses that gain access to the platform's user base can sell their products. The theories of network externalities and multi-product pricing are the foundation for the concept of multi-sidedness. Finding websites and applications that function similarly to historic village marketplaces is the simplest way to answer this query.

Specifically, to establish a hub where independent vendors can offer goods and services in return for a commission, potentially drawing customers to the marketplace. Some websites are "hybrid," acting as resellers of their own products in addition to being a marketplace for independent vendors (Amazon is an example of a hybrid online marketplace that hosts both its own inventory and of third-party sellers).

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<sup>122</sup> J.-C. Rochet and J. Tirole, "Cooperation among Competitors: Some Economics of Payment Card Associations", III RAND Journal of Economics 549 (2002); J.-C. Rochet and J. Tirole, "Platform Competition in Two-Sided Markets", I Journal of the European Economic Association 4 (1990); J.-C. Rochet and J. Tirole, "Two-Sided Markets: A Progress Report", 37 RAND Journal of Economics 645 (2006)  
<sup>122</sup> Caillaud and B. Jullien, "Competing Cybermediaries", 45 European Economic Review 4-6 (2001); B. Caillaud and B. Jullien, "Chicken & Egg Competition among Intermediation Service Providers 34 RAND Journal of Economics 2 (2003).

The main differentiator between online and offline marketplaces is size; the ability of marketplaces to lower search costs by appropriately matching supply and demand is their competitive advantage. However, additional features such as integrated auction systems and transaction optimization support (e.g., user data enabling targeted advertising) can be found in online markets. Ultimately, professional online marketplaces have developed, allowing not only consumer-to-consumer (C2C) but also business-to-business (B2B) transactions in addition to consumer-to-business (B2C) transactions.

### **5.3) Consumer protection in electronic commerce**

1. Over the last decade, advances in information and communication technology have significantly altered people's lives and created new opportunities for both consumers and businesses. The General Assembly, in its resolution 70/186 of December 22, 2015 considered that e-commerce,<sup>123</sup>"which should be understood to include mobile commerce." based on emerging network technologies, such as computers, mobile phones, and linked devices, has grown more and more relevant to consumers worldwide, and that the opportunities it offers should be taken advantage of to help facilitate economic development and growth enhance the welfare of consumers.

2. A growing number of customers use the Internet and participate in e-commerce, which makes goods and services (henceforth referred to as products) easier and faster to access. Additionally, it may present some challenges for customers that do not arise in offline business transactions. Such challenges have given rise to the requirement that current legal and regulatory frameworks be modified to meet the unique needs of e-commerce. The revision of the United Nations guidelines for consumer protection.<sup>124</sup>

It was motivated by the shift in the current business and consumer environment 2016<sup>125</sup>saw revisions to the Organization for Economic Cooperation and Development (OECD) Recommendation of the Council on Consumer Protection in E-Commerce,

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<sup>123</sup> *ibid*

<sup>124</sup> Adopted by the General Assembly in its resolution 70/186.

<sup>125</sup> OECD, 2016, Recommendation of the Council on Consumer Protection in E-commerce (Paris), available at [http://www.oecd-ilibrary.org/industry-and-services/oeod-recommendation-of-the-council-on-consumer-protection-in-e-commerce\\_9789264255258-en](http://www.oecd-ilibrary.org/industry-and-services/oeod-recommendation-of-the-council-on-consumer-protection-in-e-commerce_9789264255258-en).

another international tool in this field.<sup>3</sup> Considering these developments and concerns resulting from the continuous growth of e-commerce, the Intergovernmental the Group of Experts on Consumer Protection Law and Policy convened for the first time on requested that a report be compiled by the UNCTAD secretariat on October 17 and 18, 2016 ecommerce to be discussed in the second meeting.

3. The definition of an e-commerce transaction is "the sale or purchase of goods." services, delivered through computer networks utilizing techniques especially created for the purpose of receiving or placing of orders”

4. E-commerce encompasses a broad range of transactions carried out through mobile phones as well as other devices like tablets and PCs. Frequently, applications and platforms are used to make purchases. Though not exclusively related to business-to-consumer transactions, e-commerce is typically thought of in terms of consumer protection. Regarding business-to-consumer e-commerce, the OECD Recommendation is applicable. as well as the business methods used by companies to make possible and facilitate transactions between consumers.

For a trader to sell online and take orders online, they must be online during a business-to-consumer transaction. In order to review products and purchase them online, consumers must have access to the Internet. It is necessary to specify the payment method, which can be cash, bank transfer, credit card, or electronic money on delivery. Lastly, delivery of the product is required, either via the internet for digital content products, at a pick-up location for goods, or to the customer's residence.

5. From \$1.2 trillion in 2013 to \$2.4 trillion in 2018,<sup>126</sup> business-to-consumer ecommerce is expected to double. The UNCTAD business-to-consumer e-commerce index was introduced in 2015 and evaluates a nation's preparedness for e-commerce using four indicators: penetration of credit cards, internet use, secure servers per million people, and postal reliability score.

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<sup>126</sup> UNCTAD, 2015, Information Economy Report 2015: Unlocking the Potential of E-commerce for Developing Countries (United Nations publication, Sales No. E.15.II.D.1. New York and Geneva).

<sup>127</sup> *ibid*

6. Online purchases typically involve companies and customers from various Jurisdictions may lack specific frameworks applicable to the sale and purchase of goods and services online, have different regulations regarding the essential elements of ecommerce, and/or lack the means to take legal action against dishonest traders in the context of e-commerce, whether on a national or international scale.

7. The updated consumer protection<sup>127</sup> guidelines (guidelines 63–65; see box 1) include ecommerce as one of the new topics. A legitimate requirement that the guidelines aim to fulfill is providing consumers with e-commerce with a level of protection that is equal to or greater than that provided in other commercial contexts (guideline 5(j)). Good business practices are listed in Guideline 11 and are relevant to e-commerce as well as other forms of commerce. The guidelines ask governments to create national consumer protection policies that support best practices that apply to e-commerce as well, such as contract terms, information disclosure, secure payment methods, consumer privacy, and data security. Section V(A) deals with redress and dispute resolution. Guideline 44 outlines the key elements of consumer protection that includes the following should be included in educational initiatives of e-commerce.

8. The OECD Recommendation<sup>127</sup> promotes innovation and competition in the market while outlining the essential elements of successful consumer protection online. The updated OECD Recommendation covers new topics such as non-financial transactions, digital content products, mobile devices, active consumers, privacy and security risks, payment protection, and product safety. Two new provisions pertaining to privacy and security risks and product safety are included in the OECD Recommendation, which also updates several other provisions concerning the critical role of consumer protection<sup>128</sup> authorities and the

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<sup>127</sup> OECD, 'Competition Enforcement in Oligopolistic Markets- Issues paper by the Secretariat (June 2015), para 37 <[https://one.oecd.org/document/DAF/COMP\(2015\)2/en/pdf](https://one.oecd.org/document/DAF/COMP(2015)2/en/pdf)> (Last visited on May 15, 2024).

<sup>128</sup> Draft amendments to the Consumer Protection (e-commerce) rules, 2020 (2023) PRS Legislative Research. Available at: <https://prsindia.org/billtrack/draft-amendments-to-the-consumer-protection-ecommercerule2020#:~:text=Key%20Features%20of%0the%20Draft%20Rules&text=A%20marketplace%20e%2Dcommerce%20entity,unfair%20advantage%20of%20such%20enterprises> (Last visited on May 14, 2024).



necessity of improving their capacity to safeguard consumers in e-commerce, exchange information, and collaborate on cross-border matters.

9) In 2000, a few developing nations began investigating the problems related to consumer protection and e-commerce. To simplify e-commerce concerns, a paper on e-commerce in South Africa, for instance, offered a framework for discussion.

The following important problems and areas of worry that needed to be taken into account when developing e-commerce policies: government policies the need for people to have faith in the safety and privacy of electronic transactions; the need to improve the e-commerce information infrastructure; the need to create regulations governing e-commerce; and the need to make e-commerce opportunities available to everyone.<sup>129</sup> Consumer transactions now take place on online platforms as a result of the Internet's role in the emergence of the collaborative economy. Identifying the company and/or peer provider operating in platforms, for instance, is one of the primary challenges in the collaborative economy.

#### **5.4) The role of UNCTAD in consumer protection in e-commerce**

UNCTAD plays a pivotal role in promoting consumer protection in e-commerce through various initiatives. Established by the General Assembly, the Intergovernmental Group of Experts on Consumer Protection Law and Policy operates under UNCTAD's<sup>130</sup>

Trade and Development Board. It serves as a platform for dialogue, networking, and sharing best practices among stakeholders involved in consumer protection globally.

The group addresses challenges faced by developing countries, such as resource constraints and lack of expertise, emphasizing the importance of robust legal frameworks and institutional mechanisms. UNCTAD's mandate in consumer protection encompasses

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<sup>129</sup> South Africa Department of Communications, 2000. A green paper on electronic commerce for South Africa, available at: <http://www.gov.za/documents/electronic-commerce-green-paper>.

<sup>130</sup> Rachel Sibande, UNCTAD Cyberlaw Adoption, May 6, 2020, [https://www.linkedin.com/pulse/unctadcyberlaw-adoption-rachelsibande?utm\\_source=share&utm\\_medium=member\\_android&utm\\_campaign=share\\_via](https://www.linkedin.com/pulse/unctadcyberlaw-adoption-rachelsibande?utm_source=share&utm_medium=member_android&utm_campaign=share_via), (Last visited on May 14, 2024)

exploring the nexus between competition and consumer rights, advising member states on relevant laws and policies, and providing capacity-building activities.

The organization launched a global cyberlaw tracker in 2015 to map e-commerce legislation across its member states, covering areas like electronic transactions, data protection, and cybercrime.

UNCTAD also develops soft law tools and manuals to guide member states, including a revised manual on consumer protection that includes a dedicated chapter on e-commerce.

Capacity-building programs conducted by UNCTAD support developing countries in enhancing consumer protection and competition policies. For instance, in Ethiopia, UNCTAD reviewed existing consumer protection legislation and recommended incorporating e-commerce provisions. Similarly, the COMPAT program in Latin America provides technical assistance and training on e-commerce and consumer protection. In the Middle East and North Africa region, UNCTAD delivers workshops on e-commerce and complaints handling, aiming to develop best practices guidelines and training materials for online and offline courses.

## **5.5) Recurrent consumer protection issues in e-commerce**

Pre-purchase, purchase, and post-purchase are the three phases of the consumer-business relationship where consumer protection issues in e-commerce can be found.

### **5.5.1) Pre-purchase**

Due to the nature of the internet and the complexity of terms and conditions, which customers may not always have timely access to, information asymmetry is more prevalent in e-commerce.<sup>132 131</sup> Customers are thus more susceptible to dishonest and fraudulent behavior when they shop online. Customers require pertinent and accurate information

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<sup>131</sup> Elizabeth Goldsmith and Sue L.T. McGregor (2000); E-commerce: consumer protection issues and implications for research and education; J Consumer Studies & Home Economics; Vol.24, No.2, June 2000, pp. 124-127.

about products and services as well as the sellers in order to make educated decisions when making purchases through online commerce giving them.

- **Information requirements**

with Guideline 5(e) emphasizes the importance of providing consumers with adequate information to empower them to make decisions aligned with their needs and preferences.

Guideline 14(b) further encourages national policies that facilitate the provision of clear and timely information, including the business's identity, legal name, geographic address, website, email, and phone number, to facilitate communication and regulatory oversight. Guideline 14(c) underscores the necessity of transparent information about products or services and transaction terms and conditions. A common challenge for customers in developing countries is identifying and locating online product providers. Some jurisdictions highlight issues such as effective interest rates, consumer rights, and transparent pricing to address consumer concerns.

According to paragraph 28 of the OECD<sup>132</sup> Recommendation, e-commerce companies must furnish customers with adequate information to identify and locate them, communicate effectively, resolve disputes, and serve legal processes domestically and internationally. Paragraphs 29 and 30 outline the types of information businesses should provide to consumers. Similar to Guideline 5(e), paragraph 31 mandates detailed product or service information to enable informed decision-making. Paragraphs 33–35 address transaction-related information, while paragraph 32 specifies the required disclosures.

- **Unfair commercial practices**

The lack of personal interaction in online shopping weakens the connection between suppliers and customers, leaving customers more vulnerable to deceptive practices. This impersonal nature of online transactions creates an environment conducive to unfair

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<sup>132</sup> OECD, 'Competition Enforcement in Oligopolistic Markets- Issues paper by the Secretariat (June 2015), para 37 <[https://one.oecd.org/document/DAF/COMP\(2015\)2/en/pdf](https://one.oecd.org/document/DAF/COMP(2015)2/en/pdf)> (visited on May 15, 2024)

commercial practices, posing a significant challenge to building consumer trust in digital markets. 'Consumers' purchasing decisions are often influenced by these practices, which prevent them from making well-informed choices. Unfair practices include misleading consumers about product characteristics, employing aggressive marketing tactics, using confusing trade names or trademarks, impersonating customers, and posting fake reviews on online platforms. Traders may also exaggerate the quality or misrepresent the features of their products or services to gain a competitive edge over rivals offering superior goods or lower prices.

### **5.5.2)Purchase**

Consumers face a number of challenges during the purchase phase after they have decided to buy a certain product online.

The most common challenges at this stage include unfair contract terms, online payment security and data protection and privacy, including in non-monetary transactions.

- **Online payment security under purchase**

Online payment security during purchases is paramount to ensure the safety of transactions conducted over the internet. Measures such as encryption, secure payment

gateways, and two-factor authentication help protect sensitive financial information from unauthorized access and fraud. These security protocols safeguard against potential risks such as identity theft, credit card fraud, and unauthorized transactions. Additionally, consumers should be vigilant and only make purchases from reputable websites with secure payment methods to minimize the likelihood of security breaches. Implementing robust security measures not only safeguards customers' financial data but also enhances trust and confidence in online transactions.<sup>133</sup>

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<sup>133</sup> Contribution from the Government of Germany

- **Data protection and privacy under purchase**

Data protection and privacy are crucial aspects of online purchases, ensuring that consumers' personal information remains secure and confidential. When making purchases online, it's essential to be aware of how your data is being collected, stored, and used by the merchant. This includes ensuring that the website has a clear privacy policy outlining how they handle your data and obtaining your consent before collecting any personal information. Additionally, secure encryption methods should be in place to protect sensitive data such as credit card numbers and personal addresses during transactions. Consumers should also look for trust seals and security certifications on websites to verify their commitment to data protection standards. Furthermore, opting for secure payment methods such as credit cards with fraud protection or reputable payment gateways can provide an added layer of security for online purchases. Regularly reviewing transaction statements and monitoring for any suspicious activity can help detect and prevent unauthorized access to your personal information.<sup>134</sup>

- **Data protection and privacy**

Online shopping may put consumers at greater risk. The frequency with which personal information about customers is gathered and exchanged by providers and intermediaries<sup>135</sup> has increased due to the use of credit and debit cards during online transactions. Online businesses find value in personal data as it enhances their market intelligence and allows for personalized customer profiling. Concerns about privacy and data security include not knowing how information gathered online is used, being held accountable for data breaches, sharing information with third parties, and adhering to applicable laws and regulations. Privacy concerns are universal, regardless of personality, age, gender, or

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<sup>134</sup> L. Edwards and C Wilson, 2007, Redress and alternative dispute resolution in cross-border e-commerce transactions. European Parliament Briefing Note.

<sup>135</sup> Association of Southeast Asian Nations (ASEAN)-Australia Development Cooperation Programme and UNCTAD, 2016, Project on strengthening technical competency on consumer protection in ASEAN: Ecommerce module, available at <http://aade2.org/six-modules-strengthening-technical-competencyconsumer-protection-asean/>

nation. In order to protect consumers' privacy, businesses are encouraged by Guideline 11(e) to "use a combination of appropriate control, security, transparency, and consent mechanisms relating to the collection and use of their personal data." "Adequate controls to protect consumer financial data, including from fraud or abuse" are mandated by Guideline 66(g) for member states to implement or support. Promoting national regulations to protect consumer privacy and data security is the goal of Guideline 14(h). "Algorithmic consumer systems are capable of collecting, registering and aggregating enormous amounts of personal data, which may be accessed by unauthorized parties without consumer consent."<sup>136</sup>

The OECD Recommendation asked companies to make customer privacy safe by guaranteeing that their procedures for gathering and using customer data in the legal way, open, and equitable, permitting customer involvement and discretion, and offering appropriate security measures.

They also need to "manage digital security risk and implement security measures for reducing or mitigating adverse effects relating to consumer participation in ecommerce."<sup>137</sup> Customers are receiving more and more free goods and services in return for their personal information.

The OECD also give Recommendation to addresses these non-monetary transactions and requests that governments and other relevant parties think about how to give consumers who have issues with such transactions a way to get their problems resolved. The guidelines provided by the OECD<sup>138</sup> regarding online identity theft policy outline the ways in which Create strategies that are effective in preventing online identity theft and investigate ways to improve stakeholder education and awareness. Identity theft happens when someone

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<sup>136</sup> MS Gal and N Elkin-Koren, 2017, Algorithmic consumers, Harvard Journal of Law and Technology, 30(2)

<sup>137</sup> *ibid*

<sup>138</sup> OECD, 2017. Key issues for digital transformation in the G20 [Group of 20], available at <https://www.bmwi.de/Redaktion/EN/Pressemitteilungen/2017/20170112bundeswirtschaftsministeriumund-veed-geben-startschuss.html> (visited on May 15, 2024)

obtains, transfers, possesses, or uses someone else's personal information without authorization, either with the goal of committing fraud or another crime, or inadvertently.

### **5.5.3)Post-purchase**

"Concerns during the post-purchase phase include liability and arrangements for the return of goods and refunds when goods are not delivered, delivered in an unsatisfactory condition or materially differ from the goods ordered."During this phase, most of the consumers may have difficulties in reaching providers in means of communicating with businesses. Possible measures to protect online consumers at this stage include instituting a cooling-off period for online purchases and limiting consumer liability in the digital marketplace. Additional issues encountered during this phase are discussed in the following section.

1)Dispute Resolution Mechanisms: E-commerce platforms may facilitate dispute resolution processes to address conflicts between consumers and sellers arising from post-purchase issues such as delivery delays, damaged goods, or billing discrepancies.

These mechanisms may include mediation, arbitration, or escalation to regulatory authorities or consumer protection agencies.<sup>140</sup><sup>139</sup>

2)Consumer Feedback and Reviews: Online reviews and feedback mechanisms empower consumers to share their experiences with products and sellers, helping fellow shoppers make informed purchasing decisions. E-commerce platforms should ensure transparency and authenticity in user-generated content to prevent fraudulent or misleading reviews.

3)Data Privacy and Security: Post-purchase, consumers' personal and financial information may still be stored by online retailers for transaction records, shipping, or customer support purposes. Robust data protection measures must be in place to prevent unauthorized access, data breaches, or misuse of consumer data, safeguarding individuals' privacy rights.

4)Customer Support and Assistance: Online retailers should provide accessible and responsive customer support channels to assist consumers with post-purchase inquiries,

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<sup>139</sup> L Edwards and C Wilson, 2007. Redress and alternative dispute resolution in cross-border e-commerce transactions. European Parliament Briefing Note.

complaints, or assistance needs. Prompt resolution of customer issues enhances trust and satisfaction, fostering positive long-term relationships between consumers and brands.

5)Warranty and Guarantee Policies: Online retailers often offer warranties or guarantees on products to assure consumers of their quality and performance. Consumers should have access to information about warranty coverage, duration, and procedures for claiming warranty services in case of product malfunctions or defects."It also help in special provisions on e-commerce in consumer protection laws “and some of the countries have specific e-commerce legislation.”<sup>140</sup>

1)Product Returns and Refunds: Online consumers have the right to return or exchange products that are defective, damaged, or not as described.

E-commerce platforms typically provide clear guidelines and procedures for initiating returns and obtaining refunds, ensuring consumers are adequately compensated for unsatisfactory purchases.

## **5.6)Fostering consumer confidence in e-commerce**

Rapid advancements in digital technology have given consumers new options and made new services accessible. One such example is mobile payments, which give people without access to traditional banking services access to financial services. Consumers must have confidence in digital markets for e-commerce to flourish and bring about economic gains.Hence, building consumer trust in e-commerce has been crucial ever since e-commerce discussions first surfaced in international forums.

Since 2000, there are many developing countries in Africa, Asia, and Latin America which have benefited from the UNCTAD.Programme on E-commerce and Law Reform as they endeavor to establish legal frameworks that tackle e-commerce-related issues, maintain the integrity of online transactions, ease trade both domestically and internationally, and offer

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<sup>140</sup> For example. Malaysia (Electronic Commerce Act 2006), Peru (Law No. 27269), Poland (Act of 18 July 2002 on Providing Services by Electronic Means) and the Republic of Korea (Act on the Consumer Protection in Electronic-Commerce).



legal protection to users and providers of e-commerce. On Based on responses to the UNCTAD and questionnaire on consumer protection in e-commerce, .

### **5.6.1) Appropriate legal framework and enforcement**

Legislation which are appropriate to address issues with consumer protection in online commerce is necessary. As time is changing and digital technology and e-commerce have developed a lot, member states must update their legal frameworks to take into account new concerns and comply with guidelines. Many countries have legal frameworks for online sales and encourage corporate self-regulation."The nature and extent of laws vary widely amongst countries. El Salvador, Mexico, and Peru, for instance, use general civil law to handle e-commerce matters, but consumer protection laws in Chile, Colombia, France, the Russian Federation, and the United States, among other countries, have specific e-commerce provisions."<sup>142</sup><sup>143</sup>

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<sup>142</sup> For example, Malaysia (Electronic Commerce Act 2006), Peru (Law No. 27269), Poland (Act of 18 July 2002 on Providing Services by Electronic Means) and the Republic of Korea (Act on the Consumer Protection in Electronic-Commerce)

To safeguard consumers from dangerous situations, efficient law enforcement is essential. and deceptive activities in online commerce."Due to factors like the lack of a physical business, the cross-border nature of e-commerce transactions, and low Internet awareness in some jurisdictions and among certain consumer groups, handling consumer issues in e-commerce is more complex."

Consumer protection agencies have implemented a variety of e-commerce-related initiatives, such as workshops, research studies, educational initiatives, opinion surveys, Internet observatories, and sweeps

There are particular e-commerce laws in some nations. E-commerce is additionally covered by a number of laws, including those that govern credit card sales, competition, telecoms, unfair competition, and distance selling. According to UNCTAD research, increasing consumer confidence in e-commerce requires the availability of pertinent laws pertaining to electronic transactions, consumer protection,<sup>143</sup> privacy and data protection, and cybercrime. Laws protecting consumers online have the lowest adoption rates among these

four categories."Out of the 119 nations for which data are available, 93 have enacted e-commerce-related consumer protection laws (58 of which are developing nations or nations with economies in transition)."

### **5.6.2)Consumer education**

In accordance with Guideline 42,<sup>144</sup> member states should create general consumer education and information initiatives to empower individuals to make knowledgeable decisions about products and services and to increase their understanding of their rights and obligations. The needs of vulnerable and disadvantaged customers, including those with low incomes and those with low or nonexistent literacy levels, should receive special attention in both rural and urban areas. According to Guideline 43, "consumer education should, where appropriate, become an integral part of the educational system's basic curriculum, preferably as a component of existing subjects." A list of the crucial

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<sup>143</sup>ibid

<sup>144</sup> UNCTAD, World Investment Report,2015, <https://unctad.org/publication/world-investment-report-2015>, (Last visited on May 15, 2024)

facets of consumer protection, including e-commerce, is provided in Guideline 44, which should be addressed by programs for education and awareness.Governments and other stakeholders are urged by the OECD Recommendation <sup>141</sup> collaborate in "educating consumers, government officials, and businesses about e-commerce to foster informed decision-making."

### **5.6.3)Good business practices**

Businesses must play a significant role to support government and civil society efforts to increase trust in e-commerce.

They should endeavor to raise consumer and business awareness of the domestic and international consumer protection framework that governs their online activities, as well as their corresponding rights and obligations. As per the OECD Committee on Consumer

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<sup>141</sup> ibid

Policy's policy recommendations, it is imperative to educate parents and children about their online responsibilities and the common techniques employed by marketers to promote products. Consumer education should focus on preventing harmful practices, such as online fraud and scams, in addition to informing customers of their rights and obligations. To educate consumers in these areas, appropriate strategies must be developed. For instance, the Australian Competition and Consumer Commission's "tips for a fine time shopping online" offer guidance to online shoppers on how to safeguard their privacy and conduct business securely. This type of easily comprehensible awareness-raising material.

To increase consumer trust, particularly in cross-border e-commerce, better business practices are required. Companies can use best practices, trustmarks, self-regulation, and codes of conduct to address these demands. With a focus on e-commerce. The Better Business Bureau actively advocates for ethical business practices and consumer protection self-regulation. Its ratings help to increase consumer trust in the digital market

Its code of business practices comprises eight principles: build trust, advertise honestly, tell the truth, be transparent, honor promises, be responsive, protect privacy, and embody integrity. The advertising industry is one where self-regulation has arguably produced the most noticeable effects. In developed nations, there are several initiatives. For example, the European Advertising Standards Alliance has adopted codes as well as the US SelfRegulatory Guidelines for Online Behavioural Advertising. Furthermore, in an effort to encourage ethical advertising, the Network of the Latin American Self-regulation Advertising Organisms was established in 2007 freedom of expression.

#### **5.6.4) International cooperation**

In its resolution 70/186, the General Assembly determined that "Member States, Effective consumer protection in e-commerce should be a top priority for companies, customers, and their representatives. International cooperation and consultation can be the most efficient way to handle certain consumer protection concerns, such as applicable law and jurisdiction. Applicable law and jurisdiction are frequently a factor in conflicts or disputes that arise between consumers and cross-border transactions. The international private law norms of member states regulate the relevant laws and courts in any given consumer

situation or dispute. Consequently, in order to address jurisdictional issues in cross-border e-commerce and to develop a shared understanding for putting the necessary measures in place to address such issues, international consultations and cooperation are required. The consumer protection guidelines encourage member states to create mechanisms for exchanging information on general consumer protection policies and measures, as well as to encourage the exchange of consumer education and programs, collaborative training initiatives, and the development of regulations. In order to allow other importing nations to access "information links regarding products which have been banned, withdrawn, or severely restricted," guidelines encourage themselves sufficiently to guard against the negative effects of such products. In order to implement the guidelines, member states and their consumer protection enforcement agencies are encouraged by guideline 85 to utilize the international networks that are already in place, to enter into appropriate bilateral and multilateral arrangements, and to take other appropriate actions. Guideline 85 also encourages consumer protection enforcement agencies to coordinate investigations and enforcement activities.

## **CHAPTER 6**

### **COMPETITION COMMISSION IN REGULATING E-COMMERCE IN INDIA: CRITICAL ANALYSIS**

#### **6.1) Market Study on E-Commerce, a survey by the CCI**

The creation of a stable and equitable market is covered by the Competition Act of 2002. Its goals are to uphold healthy competition and stop anti-competitive behavior. In order to safeguard the interests of buyers and sellers, as well as their right to unrestricted trade, fair competition is essential. The latest advancements have made it possible for e-commerce to become a leading platform in the market."India has been the country where e-commerce has grown at the fastest rate in the world—51 percent. By 2020, revenue is predicted to

reach USD 120 billion, up from USD 39 billion in 2017<sup>142</sup>. By 2034, it might even overtake the US to take the second place in the e-commerce market."<sup>143</sup><sup>144</sup> As a result, the e-commerce market platform has a significant impact and requires careful regulation and oversight in accordance with competition law. On the other hand, e-commerce has drawn a lot of criticism. Both the sellers and service providers on the online platform and the physical retail stores have been complaining to the Competition Commission of India (CCI) on an increasing basis. Section 4 alleges that the internet behemoths have been engaging in anti-competitive agreements (Section 3) and establishing their dominance to eliminate competition.

## **6.2)Key Finding And Observation Of The Survey**

On January 8, 2020, the CCI released its report titled "Market Study on E-commerce in India: Key Findings and Observations," which was the result of an online survey.

The three main categories of e-commerce in consumer goods (mobiles, lifestyle, electrical & electronic appliances, and groceries), lodging services, and food services were covered by a package of secondary research. questionnaire surveys, focused group discussions, one-on-one meetings, a multi-stakeholder workshop, and written submissions of stakeholders. Participants in the study included sixteen online platforms, seven payment system providers, and 164 business entities from all over India.<sup>145</sup> Eleven industry associations that represent various stakeholder groups also took part. The survey's results have been examined in five major categories as follows:

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<sup>142</sup> Dhruv Ranjan, Nandini Pahari, Satvik Mohanty, Vertical Restraint on the Indian E-Commerce Sector: The New Age Competition Issues, THE SCC ONLINE BLOG, ( 5 Jan, 2021, 7:30 Am), <https://www.scconline.com/blog/post/2019/08/08/vertical-restraints-in-the-indian-e-commerce-sector-the-new-age-competition-issues/>.

<sup>143</sup> India to overtake US as world's largest e-commerce market: Study, ECONOMIC TIMES, (5 Jan, 2021, <sup>144</sup> :00 Pm),<https://cdn.ampproject.org/v/s/m.economictimes.com/industry/services/retail/india-to-overtakeus-as-worlds-largest-e-commerce-market-study/amp>.

<sup>145</sup> Market Study on E-Commerce in India: Key Findings and Observations, the Competition Commission.

### **6.2.1)Platform Neutrality**

The fact that the online platforms are dual-purpose is seen as a barrier for the sellers. The platform functions as a marketplace that facilitates transactions between buyers and sellers while simultaneously engaging in competition with other similar platforms. These platforms offer their own private label products in addition to endorsing or favoring specific product brands referred to as "preferred sellers." As a result, it is believed that the online marketplace favors "preferred sellers" and its own brands. The algorithms that should determine search rankings are frequently manipulated. Similar to this, the platforms use the data they obtain—demand, supply, user reviews, etc.—in their customer interfaces to update the selections they offer with higher-quality options and to develop their own private labels. Important data and user ratings are not disclosed to the service providers. Based on the commission paid, search results and visibility are determined. It is implied that low commission rates result in low platform visibility, which has an impact on the sales of less-preferred sellers.

### **6.2.3)Platform to Business Contract Terms:**

The argument revolves around the perceived discriminatory nature of contracts between platforms and service providers. Online platforms are believed to wield significant leverage over smaller service providers, leading to complaints about the platforms' arbitrary behavior.

Platforms prioritize growth over profitability and can easily absorb losses, while service providers are pressured to offer substantial discounts to fuel platform expansion. Despite platforms offering the option for sellers to provide discounts, non-participation can result in reduced visibility. Additionally, online food platforms often mandate service providers to have their own delivery systems, increasing operational costs. This suggests that platforms impose terms unilaterally without mutual negotiation, creating a sense of arbitrariness towards seller.

### **6.2.4)Platform Price Parity Clause:**

The platform parity clause prohibits service providers from offering their products at lower prices on other platforms. This clause is widespread in India, guaranteeing the lowest price of a service contractually across all platforms. Such terms raise competitive concerns. According to the CCI, parity clauses diminish the incentive for rival platforms to attract sellers and discourage new platforms from offering lower commissions. Moreover, incumbent platforms may collude to set a standard commission rate, increasing commission rates across all platforms. From the perspective of online platforms, they invest in their platforms, only for consumers to opt for cheaper products after comparing prices on numerous other platforms.

#### **6.2.5) Exclusive Agreements:**

E-commerce platforms' engagement in exclusive agreements poses challenges for brick-and-mortar retailers. Online giants enter into such agreements with service providers, impacting competition. The CCI identified two types of exclusive agreements: one where only one brand exists in a certain product category, and the other where a specific product offering is exclusively launched on a platform. Smartphone manufacturers, for instance, often launch their new models exclusively on online platforms, favoring single-channel distribution. This results in offline retailers losing out to their online counterparts.

#### **6.2.6) Deep Discounts:**

Platforms dictate discount schemes, with service providers typically having no input. Due to the lack of transparency, service providers perceive discounts as discriminatory. Exclusive partners receive higher discounts from platforms, resulting in increased visibility, consumer traffic, and ultimately, better sales. Service providers lose control over the final price offered to consumers, as it is influenced by factors such as competitors' pricing and brick-and-mortar retailers' prices. Consequently, service providers incur greater losses, as platforms offer prices below the cost of production, which is unsustainable not only for service providers but also for offline retailers.

### **6.3) Critical Analysis**

#### **6.3.1) Is e-commerce a relevant market?**

The CCI has maintained its advantage because it believes that e-commerce is a viable market."E-commerce is a special medium that shares characteristics with the conventional market. As a result, it has taken a number of instances to realize what ecommerce really is."The commission is still in the process of reaching a decision on it. It was decided in the Ashish Ahuja v. Snapdeal<sup>146</sup> case that e-commerce and physical stores belong to the same relevant market. They complement one another by showing two distinct distribution channels. The CCI also declared that consumers weigh the option of purchasing online or offline and shift according to the price offered. Furthermore, Mohit Manglani v. Flipkart India (P) Ltd,<sup>147</sup>the CCI observed the unique characteristics of online platform. How e-commerce makes it possible to compare product features and prices at the same time across several platforms.

Ultimately, the commission concluded that online marketplaces are essentially advantageous to both buyers and sellers in the case of All India Online Vendors Association v. Flipkart India (P) Ltd.<sup>148</sup>

In addition to giving shopkeepers the convenience of selling their goods without having to pay for market setup, delivery, or upkeep, it also gives customers the comfort of easy home shopping—a service that the traditional market does not offer. It is therefore possible to argue that the CCI is shifting toward taking into account the characteristics that online platforms have that the offline market lack.

### **6.3.2)Deep Discounts and Exclusive Agreements:**

The Confederation of All Indian Traders (CIAT) has raised concerns about the ecommerce platforms' practice of offering significant discounts, alleging it to be unethical and unfair."CIAT argues that the aim of these discounts is to eliminate competition from the market in the long term, establishing a monopoly and subsequently charging excessive prices for their products."While discounts are a common marketing strategy and not

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<sup>146</sup> Ashish Ahuja v. Snapdeal MANU/CO/0056/2014.

<sup>147</sup> Mohit Manglani v. Flipkart India (P) Ltd, MANU/CO/0033/2015.

<sup>148</sup> All India Online Vendors Association v. Flipkart India (P) Ltd., MANU/CO/0078/2018.



inherently anti-competitive, determining their harmful effects on competition requires assessing whether they constitute predatory pricing. Predatory pricing is typically a consequence of market dominance, necessitating an examination of whether ecommerce platforms hold such market.<sup>149150</sup>

. Currently, e-commerce accounts for only 0.5% of the total brick-and-mortar market. However, it commands a significant share of smartphone sales in India, comprising 40% of the market. Despite not dominating the entire market, exclusive agreements between platforms and sellers ensure the online platforms' dominance in specific segments, such as certain smartphone brands. In the case of M/s.

Transparent Energy Systems Pvt. Ltd. v. TECPRO Systems Ltd,<sup>153</sup> the concept of predatory pricing was elucidated. It was established that if the market price falls below the average cost of production due to deliberate price manipulation aimed at eliminating competition, and if there is a plan to recoup losses by subsequently raising prices after eliminating competition, it constitutes predatory pricing under section 4 of the act. In light of the All India Online Vendors Association v. Flipkart India<sup>151</sup> (P) Ltd. case, online

platforms possess unique characteristics. Additionally, due to exclusive agreements, ecommerce is not always a substitute for offline retail, and significant dominance can persist, particularly in segments like certain smartphone brands. Therefore, it cannot be discounted that discounts offered by online platforms may amount to predatory pricing, which is anti-competitive and violates Section 3(4) read with Section 3(1) and Section 4(2) read with Section 4(1) of the Act.

### **6.3.3) Parity Clause**

There are two types of Parity Clauses:-

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<sup>149</sup> Divye Sharma, India: Competition Law And E-Commerce: A Concern For The Future, MONDAQ (10 Jan, 2021, 10:45 Am) <https://www.mondaq.com/india/antitrust-eu-competition-/400368/competition-law-and-e-commerce-a-concern-for-the-future?signup=true>.

<sup>150</sup> M/s. Transparent Energy Systems Pvt. Ltd. v. TECPRO Systems Ltd, MANU/CO/0037/2013.

<sup>151</sup> ibid

## Wide Parity clause -Narrow Parity clause

In cases where an online platform and a service provider have a Wide Parity Clause, the seller's or provider's price for the good or service offered to the relevant online platform shall not be less than the price offered to other online platforms, including the online platform's own website or physical store. In contrast, the Narrow Parity Clause limits the scope of the contract to the service provider alone. That is, the price that the seller or service provider offers on its website or in its own physical store should not be less than the price that it offers to the online platform. The Survey states that India has a wide parity clause.

A wide-ranging or broad parity clause puts the online platform ahead of the service provider. The seller's independence to determine different prices for different platforms is taken away. Most importantly, it discourages start-up companies who are willing to provide products or services at a discount. These sellers are unable to accept competitive offers from new online businesses because of the extensive parity clauses imposed upon them. It also promotes uniformity, as the CCI survey made clear. Internet giants could band together and establish identical terms and exorbitant prices.

Many nations accept the Narrow Parity Clause, which is preferable to Wide Parity. Other platforms not being a better viable parity clause is not a concern for Narrow Parity. It deters the internet behemoths' investment in their web portals, though. "It is customary for customers to compare the same product across several platforms and select the one with the best deal." Therefore, it is unjust for those massive online platforms that spend billions to create nearly flawless portals, only to see a decrease in sales. But because of the wide parity clause that still exists in India, no other online platform experiences this problem save the hotel industry.

Restaurants and hotels take advantage of the parity clauses, regardless of how broad or narrow they are. Hotels have partnerships with various OTAs through which they receive exposure. However, it is evident that customers are given a better deal once they arrive at the location. They are required to check in directly with the hotel and supply their emails. Discounts are given to customers as a perk. As a result of this practice, hotels unjustly profit from the visibility while OTAs suffer losses.

There has always been discussion about parity clauses, whether they should be used, and whether wide parity is preferable to narrow parity. It goes without saying that narrow parity would help small vendors and encourage the entry of new startups.

However, this raises the question of whether encouraging new businesses will boost competition.<sup>152</sup>

Or, should the narrow parity clause be implemented, will it prove to be so restrictive that, given the size of the market, e-commerce will be discouraged by market laws? Here, there must be a balance. However, it appears that the wide parity clause has a bigger effect and creates a bad market scenario. Wide parity has been deemed anti-competitive by numerous nations. Narrow parity will increase rivalry between and within brands and provide opportunities for new competitors.<sup>153</sup>

Regarding broad, narrow, or no parity, the CCI ought to put forth a plan of action considering the Indian market's circumstances. Laws pertaining to parity clauses should be formulated after weighing the benefits and drawbacks, as parity clauses also depend on government policies and priorities.

#### **6.4) E-Commerce and Consumer Protection: A Tight Spot**

The way society, and business houses in particular, interact with businesses has been profoundly altered by information and communication technology. With the emergence of e-commerce, technology has also revolutionized business transactions. The use of computers and the Internet for e-commerce has elevated business transactions to a global scale in the current environment.<sup>154</sup> The effects of recent technology developments and the significant e-commerce convergence. Transactions have drawn the interest of private citizens, government agencies, corporate entities, and global organizations.

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<sup>152</sup> What's happening with the Rate Parity in the Hotel Industry?, BUSINESSBLOG.TRIVAGO.COM, ( 19 Jan, 2021, 6:45 pm) <https://businessblog.trivago.com/rate-parity-hotel-industry-status/>.

<sup>153</sup> Ramakrishnan Et Al., E-commerce in India-Growth and Prospects, 2(3) Asia Pacific Journal of Research in Business Management 101-114 (2011).

<sup>154</sup> Eisingerich, Andreas B.; Kretschmer, Tobias, in E-Commerce, More is More, 86 Harvard Business Review 20-21 (March, 2008): Available on <http://hbr.org/2008/03/in-e-commerce-more-is-more/ar/1> (Last Accessed on May 7 2024).

While they have helped business endeavors flourish, they have also presented a number of obstacles and challenges to different social and individual interest groups, including those related to data protection, consumer protection, privacy violations, and other issues.<sup>155</sup>

Because of this, the difficulties presented by e-commerce have drawn attention to the necessity of creating a regulatory framework to address these difficulties and ensure that consumer rights are adequately protected. Additionally, it created a need to support the expansion of e-commerce while providing a correspondingly safe system to carry out transactions and satisfy consumer protection requirements in light of the new phenomenon of e-commerce.

### **6.5) Threats to Consumer Protection in E-Commerce**

Undoubtedly the e-commerce has made it easier and more affordable for customers to buy and sell goods and services, but it has also put them at risk of having their fundamental rights and interests flagrantly violated at e-commerce portals."The primary advantages and prospects that e-commerce offers to consumers and businesses are as follows: a) increased choice and global accessibility b) increased service quality and competitiveness; c) mass customization and personalized goods and services; d) product availability and middleman elimination; e) increased efficiency and reduced costs; f) new business prospects and goods and services, etc."Nonetheless, it has sparked a range of consumer concerns about the infringement upon their fundamental rights that are acknowledged on an international scale.<sup>156</sup>The following are the main concerns of consumers when it comes to consumer protection in e-commerce transactions:<sup>157</sup>

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<sup>155</sup> Elizabeth Goldsmith and Sue L.T. McGregor (2000); E-commerce: consumer protection issues and implications for research and education; J Consumer Studies & Home Economics; Vol.24, No.2, June 2000, pp. 124-127.

<sup>156</sup> A Report on Approaches to Consumer Protection within the APEC Region, Report of the Electronic Consumer and Steering Group, October 2002. See [http://www.nacpec.org/docs/Approaches\\_to\\_consumer\\_protection.pdf](http://www.nacpec.org/docs/Approaches_to_consumer_protection.pdf) (Last Accessed on May, 2024)

<sup>157</sup> A Final Report on "Canadian Consumer Battery Baseline Study," Environment Canada, RIS International Ltd., (2007) Available at [http://www.ec.gc.ca/Publications/C2F55D78-072A-4ED3-ACAAB4B4FE5B991%5CCanadian\\_Consumer\\_Battery\\_Baseline\\_Study\\_Final\\_Report.pdf](http://www.ec.gc.ca/Publications/C2F55D78-072A-4ED3-ACAAB4B4FE5B991%5CCanadian_Consumer_Battery_Baseline_Study_Final_Report.pdf) (Last accessed on May 8, 2024).

1) Unfair marketing practices that are exposed to consumers:

- a) Inadequate disclosure of information, such as refund guidelines, terms of cancellation, and warranty details.
- b) The enforceability of contract terms, for instance.
- c) Practices related to merchandise and delivery, such as tardiness and performance issues.

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- d) Payment; for instance, recouping fraudulent charges in the event that credit card information is obtained by illegal means.
- e) Transaction confirmation and cancellation policies; for instance, consumers' ignorance of their right to cancel online transactions, including those involving purchases they made in error.
- f) Deception and fraud, for instance, lack the tools to verify the authenticity of goods bought online.

2) Unsafe product.

3) The privacy of any information that customers choose to share.

4) Identity of seller.

5) A strong grievance procedure and legal recourse in the event that something goes wrong.

6) Defense against the negative consequences of intense market competition, which could involve the selling of the same product at various price points.

7) The delivered goods must match the description, quality, and quantity that the customer has paid for.

8) Deliveries of goods at the appropriate time and location.

## **CHAPTER 7 CONCLUSION AND SUGGESTION**

### **7.1)Hypotheses**

In this dissertation the answer of my hypothesis is 'Yes'. The "Competition Commission of India" need to look after the regulation of e-commerce ,anti competitive practice , which put changes on market consumer protection.CCI also facing unfair business practice in e-commerce.The Competition Commission of India (CCI) is essential in controlling anti competitive practices, which affects market dynamics, consumer protection, and overall competitiveness.However, the CCI has struggled to regulate the rapidly growing e-commerce sector in India."The unique and evolving nature of digital markets makes it difficult to apply traditional regulatory methods. Issues such as deep discounting, exclusive agreements, and the preferential treatment of certain sellers or products complicate fair competition. Unfair business practice is also taking place which leads in threads to Consumer Protection."So to make E-commerce market more effective CCI need to continuously adapt its strategies and enhance its resources and expertise to effectively manage these challenges and ensure a fair and competitive marketplace.

### **7.2)Conclusion**

The use of e-commerce by today's generation has become a dynamic and rapidly evolving component. The growth of the sector is fueled by the increasing number of Internet and smart-phone users, significant cost reductions, and a wide range of services.

However, this surge in online shopping has also brought about notable competition issues.

As discussed in Chapter 1 it is the introduction towards dissertation which explains the research methodology, scope for research, objective of research. Hypothesis for the research has been drafted in this chapter.

As discussed in Chapter 2 E-commerce refers to the buying, selling, marketing, and distribution of goods, including digital products and services, through electronic networks.Its growth has been driven by technological advancements and their integration into commercial operations. However, this evolution has also introduced competition issues

in the sector. Despite recent challenges, an e-commerce retail renaissance is underway."E-commerce encompasses various types, such as B2B, B2C, C2B, C2C, G2C, and G2B Models Of Competition .Competition-related concerns include price discrimination and predatory pricing, which can significantly impact competition.In India, e-commerce adoption is still limited, with many businesses operating offline."The integration of e-commerce into business practices relies on the availability of technological infrastructure, businesses' ability to adapt, and the presence of fair competition in the market.

The shift towards digitization in the global economy has transformed traditional business models into online markets. These online marketplaces, acting as multi-sided platforms, connect sellers, buyers, and advertisers to facilitate transactions, leveraging network effects across user groups."This has led to greater price transparency and competition, influencing manufacturers and retailers' pricing and distribution strategies. Manufacturers, seeking more control over pricing and quality, have increased their presence at the retail level and engaged in vertical restraints with retailers, affecting competition among sellers of the same brand."Section 3(4) read with Section 3(1) of the Competition Act can address these anti-competitive practices if they involve anti-competitive agreements. Dominant entities' unilateral conduct in the e-commerce sector may be scrutinized under Section 4.

However, specific e-commerce regulations might be needed to handle sector-specific issues like network effects, cross-border sales, and algorithm use. The Bill and the Ecommerce Report can help establish a robust competition law framework for online platforms."The CCI's rule of reason approach in handling online vertical restraints is promising, as it balances anti-competitive effects with pro-competitive justifications. The future of CCI's approach to e-commerce complexities will depend on cases like MakeMyTrip and FHRAI and the judiciary's handling of challenges from major players like Amazon and Flipkart against CCI probes."

As discussed in Chapter 3 ,I have talked about the growth of e-commerce which has resulted into technological advancements integrated into commercial operations.

However, this evolution has concurrently led to the emergence of competition issues within the e-commerce landscape."Various types of e-commerce models exist, including Business-to-Business (B2B), Business-to-Consumer (B2C), Consumer-to-Business (C2B), Consumer-to-Consumer (C2C), Government-to-Consumer (G2C), and Government-to-Business (G2B)."

Further I have explore the evolution of competition law in India, talked about its phases till present date.Understanding the development of competition law in India which have provide valuable insights into how regulatory frameworks have adapted.I have examined the countries with the largest e-commerce markets."Understanding the dynamics of leading e-commerce markets offers valuable lessons and benchmarks for policymakers, regulators, and businesses."This chapter also talk about Antitrust laws in India, originally enacted as the Monopolies and Restrictive Trade Practices (MRTP) Act in 1969, aimed to ensure the economic system did not concentrate power to the detriment of the public, reflecting a socialist vision.The Competition Act of 2002, which replaced the MRTP Act, encountered similar regulatory challenges in its early years, from 2002 to 2009.

As discussed in Chapter 4 The judicial approach of the Competition Commission of India (CCI) in regulating the e-commerce sector has evolved significantly, reflecting the complexities and dynamic nature of digital markets."Through an overview of the provisions of the Competition Act related to anti-competitive agreements, abuse of dominant position, combinations, and the delineation of relevant markets, it becomes evident that the CCI has made substantial efforts to address the unique challenges posed by e-commerce."

As discussed in Chapter 5 Online marketplace platforms are multi-sided entities that connect various user groups—sellers, buyers, and sometimes advertisers—to facilitate transactions. Platforms offering search services, as defined by the Commission, act as intermediaries that link search users with advertisers."When customers and sellers engage in shopping, these online platforms function similarly to a shopping mall, providing a virtual space for transactions."Companies like Amazon and Flipkart own such platforms, enabling interactions between buyers and sellers.



The key competitive advantage of these marketplaces lies in their ability to reduce search costs by effectively matching supply with demand. Unlike offline marketplaces, online platforms can scale significantly and often include additional features like built-in auction systems and transaction optimization tools, such as targeted advertising based on user data.

Both Flip-kart and Amazon utilize a marketplace model to operate their e-commerce businesses. This model provides online intermediation services that benefit sellers, while customers gain from the intermediary services these platforms offer. Consequently, under Section 3(4) of the Act, any agreements between these platforms and the retailers using them are subject to scrutiny.

As discussed in Chapter 6 "A critical analysis of the Indian legal position reveals a clear but concerning picture. On one hand, various legal provisions address consumer protection in e-commerce transactions: Section 4 of the Consumer Protection Act, 1986 (Consumer Protection Councils), Section 66A of the Information Technology (Amendment) Act, 2008 (Hacking), and Section 72A (Privacy and Confidentiality of Information)."However, these provisions are somewhat scattered and lack a cohesive structure. The existing legal framework for consumer protection in e-commerce transactions is neither sufficiently focused nor specifically designed to ensure efficient consumer protection in this context.

### **7.3) Suggestions**

As a result, Indian consumers do not enjoy adequate legal protection for their rights when engaging in e-commerce transactions. If these issues are not properly addressed, they could undermine consumer confidence in e-commerce, thereby negatively impacting the growth of the sector. Therefore, it is imperative to develop a more integrated and targeted legal approach to effectively protect consumer rights in the rapidly evolving e-commerce landscape.

“Regarding competition law issues in the e-commerce industry, a key question is whether e-commerce constitutes a separate relevant market or simply a new retail channel within the existing retail market.”In India's e-commerce market, the Competition Commission of India's "Market Research on E-commerce identifies several competition concerns,

including platform neutrality, pricing parity, resale price maintenance, and deep discounts."In platform-to-business contract terms, platforms often leverage their stronger bargaining position to impose "unfair" contract terms, deemed anti-competitive under the Act. These platforms have the power to define and change the conditions of engagement unilaterally, often to the detriment of sellers and service providers' commercial interests.

The CCI has not yet taken a firm position on the issue of a relevant market in the ecommerce industry.CCI needs to give more specific justifications for providing greater clarity on competition-related issues, identify the relevant market."Upon a the rough analysis of CCI's circumstances in prior cases, it appears that the organization may have overreached itself in safeguarding the growth of e-commerce by granting these stores a broad exemption from Section 4 protection."Since competition is not a natural phenomenon, it must be protected, nurtured, and encouraged through regulatory measures like reducing market distortions and restrictions and increasing access to related productive inputs like capital, markets, infrastructure, technology, and human capital, among others. Making sure there is "fair competition" in every marketplace is the Commission's primary responsibility. If players in the market exhibit any actions that hinder innovation in the e-commerce sector, harm consumers in marketplaces, or discourage competition.It is thus clear that the CCI is not underestimating the exponential growth of the Indian e-commerce industry and is taking the appropriate steps to ensure its steady.

It is anticipated that the e-commerce sector will keep growing in the future. Long-term success for the industry will be greatly aided by improved laws and regulations as well as enforcement policies for e-commerce."Finally, but just as importantly, a developed, competitive, robust, fair, and strong market can be attained by giving customers the best protection possible against unfair business practices and by lending their strength and spirit to the expansion of the e-commerce industry."According to common wisdom, having sufficient legal safeguards for consumers will give rise to new consumer rights and a developed market that supports businesses. Therefore, the enactment of the aforementioned consumer protection principles into legal and regulatory mechanisms for the reinforcement of consumer rights in online transactions will both guarantee the preservation of

fundamental consumer rights in online transactions and accelerate the expansion of the online trade.

Lastly, because the markets have changed despite the regulations remaining the same, competition people should exercise caution when applying precedents from the offline retail sector to the online retail sector.

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