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ISSUES INVOLVING BIG DATA UNDER THE INDIAN COMPETITION LAW REGIME

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Abstract:

Big data, with its evolution, has been attributed different meanings, definitions, and characteristics. Any research on the role and position of big data in e commerce shall begin with understanding the meaning and concept of big data. Over the years, big data has been a buzzword used for addressing characteristics of datasets that ranges from size to ate of accumulation at e-commerce platforms. Big data is mainly a high-volume, high-velocity and/or high-variety set of informative assets that demand cost-effective, innovative form of information processing. It has enabled enhanced insight, decision making, and process automation at e-commerce platforms. The government also relies on big data to get the information about its citizens. One the biggest example of such big data can be UIDAI. Apart from volume, velocity and variety, other defining characteristics of big data can be the exhaustiveness, granularity (fine grained and uniquely indexical), scalability, veracity, value, and variability. It is unlikely for any datasets to satisfy all of the above characteristics. Therefore, it is important to determine the permutation and combination of these gamut of attributes that can lead us to classifying something as big data. The concept of big data under e commerce platforms is still flourishing in India. the regulatory framework and the understanding of the same does not have much clarity under the Indian competition law regime. There are many issues pertaining to the same that remain untouched under the Competition Act, 2002. This rendered the issues involving big data to be out from the ambit of complete vigilance. Through this paper the author proposes to address the meaning of big data and issues pertaining to the under the Competition Act, 2002 in India. Various judgements of the CCI and the provisions of the Competition Act, 2002 have been relied upon in the paper wherein certain loopholes have been addressed pertaining to the issues of relevant market for big data and e commerce. Through this paper the author proposes to suggest CCI to consider other relevant factors that are not provided under the Act in determination of relevant market for big data and e-commerce platforms.

Keywords: big data, e-commerce, relevant market, factors, determination, CCI, issues, competition, advertisers, markets, consumers.

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1. Introduction

Today, the science behind gathering information is rapidly changing. Advent of social media has brought a revolution in the field of sharing of information online. Nowadays, majority of online sites have information about us. They know what work we do, how we commute and about our choice and preferences. Ever wondered why we keep getting suggestions on different websites for shopping the same things that we searched recently? Well, it is the big data that does so. Easily put, the host/ advertising companies collect our information and give suggestions for similar products or services at different websites.

We consent to recording of information, uploaded by us, on social networking sites without even knowing that we had consented for the same. The online platforms where we enter our details are further shared by third party hosts as per the agreements between the hosts and online sites. This recorded data, known as the big data, is used by the host companies to understand the consumer's inclinations towards the products and services in the online market. Further, this data is referred for automated advertisement of other alternate relevant products and services that are provided by the host companies. This data is known as big data. It is so complex and large that traditional data processing applications can be inadequate in keeping track of the same. It acts as predictive analytics for the online sellers or service providers. Big personal data is heaven for online products and service providers as they can make their advertisements as personalized as possible.

As the data sets are quite large, they aid in taxing the capacities of main memory, local disk, and remote disk. The same have been seen as problems that big data solves. While this understanding of big data focusses mainly on one of its features which is the size, other characteristics posing a computational challenge to existing technologies have also been examined. The (US) National Institute of Science and Technology has defined big data as data which exceed the capacity or capability of current or conventional methods and systems. These challenges are not merely a function of its size. Thomas Davenport provides a cohesive definition of big data in this context. According to him, big data is data that is too big to fit on a single server, too unstructured to fit into a row-and-column database, or too continuously flowing to fit into a static data warehouse.

Google and Facebook have made billions by selling the data they collect to third party advertisers. Often, even the consumers do not mind sharing personal information in return for something valuable. But the sharing of big data has certain loopholes and certain clarities are required for the same so that the personal data is not embezzled.

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The exact calculations are difficult to make but in 2013 it was reported that an astonishing 90 percent of the world's data was generated in the years 2011 and 2012. Today, the output of data is doubling every two years. In the case of Data Protection Commissioner v. Facebook Ireland Ltd & Maximillian Schrems, a 25-year-old Austrian law student requested his file from Facebook and discovered that the company had 1,222 pages of data relating to him[1].

2. Literature review:

In a research conducted by Centre for Internet and Society, India a case study involving the role of big data in governance has been done. In this paper the authors analyze the role of big data in governance over the Indian citizens. The issues underlying the functioning of UIDAI, credit scoring, intelligent transport system, predictive policing of alleged criminals have been addressed in the paper. The reliance placed by government on big data for a better governance and lacunas involved therein have been discussed in the said paper.

Further, in a research paper authored by Marco Gambaro under Market and Competition law Review the role of big data in empowering the market has been analyzed. Economic features of the big data have been analyzed in the article wherein the role of big data as a tool for gaining dominant position in the market has been discussed. It has been said that in many digital/ e-commerce platforms, data can be said to be a relevant input for production and supply, but it is not an essential condition for facilitating the same. Most of the data are collected in double sided market platforms. On one side, they are used to customize services and details, and on the other side they contribute to make sources for advertising more efficient. So, the transfer of personal data can be considered an implicit price for many free information services. Consumers are usually unaware of subsequent pervasive use of their personal data, and therefore give them away easily. Big data can amplify competitive advantages and related dominant positions, leveraging on information asymmetries.

Further, in a study conducted by a team of European Intellectual Property Institutes Network (EIPIN), from the 19th EIPIN Congress 2017/2018, issues pertaining to the role of big data in providing monopoly has been discussed. It has been said that in the realm of monopolistic markets there are arguments that favor as well as act against the circumstances that monopoly in the market creates. Arguments that are in favor of the same are the stability of prices and services offered effectively and efficiently. Contrarily, it can be said that a market wherein monopoly prevails can enable the exploitation of consumers. Clearly, higher prices can be set in

[1] Case C-311/18 (July 16, 2020)

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return for inferior goods and services. In the sector of big data-driven business models analyzed in this report (social media or network), the services that are offered are normally acceptable and prices are mostly low or zero cost. Therefore, under an abuse of dominant position in this sector renders the consumers to be walking in a blind alley, also known as consumer welfare paradox, as discussed in the paper. it has been suggested in the report that the measures that would apply in resolving the issues pertaining to the same shall be focused on correcting the market, but it is not necessary that those measures would not be in favor of consumer welfare as the service would tend to change. Therefore, it has been concluded through the report that monopoly is desirable from the consumer's perspective in big data-driven business models.

3. Methods and result:

The research paper is based on doctrinal analysis method and the data is collected from primary and secondary sources. Primary sources include legal resources such as judgements, case laws and regulatory laws. Secondary sources of data collection include articles, books, reference journals, opinions, and blogs.

4. Technology and big data

The internet is not just limited to gathering of information in the present era of digitalization. The importance of technology has increased to such extent that our desires can be effectuated with just one scroll and touch, at our doorstep with help of technology. Every part of our life directly or indirectly dependent on technology and internet. Essentially, it is about being able to connect or pair devices together with the touch of a single button. The future of innovation will pragmatically mean that anything that CAN be connected WILL be connected. Why would you even need so many devices to communicate with each other? Well, there is potential value to this system, but it wouldn’t be possible without that Big Data.

But the issue that needs to be understood is that if the technology is overpowering the human brain. The answer to this issue can be that the efficiency of human brain has not increased much from the time the human civilization developed but the technical advancement is increasing at its pace. Does that mean that in future technology will be smarter than the human brain? Well, we can say so because average human population of the world is dependent on technology without worrying about how it works. It can be said that we rely on apps more than we rely on humans. But the whole technological system relies on big data for functioning. It is majorly the personal information that is gathered from consumer’s profiles, be it on the social media, bill payment apps, ration apps, bill splitting apps etc. Most of the daily activities are dependent on big data these days.

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5. Relevant market for big data and e commerce platforms

Section 2 (r) of the Competition Act, 2002 defines relevant market. It is a market determined by the commission with reference to the relevant product market and relevant geographic market. Section 2 (s) and (t) respectively define the relevant product and geographic market. "Relevant geographic market" means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighboring areas. "Relevant product market" means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use.

Now a further issue arises is that if most big data services are free then can there be consumers for it. In this context, it is important to understand the definition of consumer first. The definition for the same has been provided under section 2 (f) of the Competition Act, 2002. Since we know that the relevant market for big data is the online companies and to become a consumer some form of payment of consideration needs to be made. Therefore, it can be said that the advertisers of the companies are the consumers in the market of big data. It has already been discussed in this paper that the advertisers pay to these social networking sites in return for selling them the data. By looking into these definitions, we can say that the relevant market for big data is all the online companies or sites that depend on these data.

Further the CCI has held in the case of In Re: Samir Agrawal[2] wherein Uber India was an opposite party, CCI dealt with the circumstances pertaining to the cab aggregators model. The CCI acknowledged the fact that estimation of fare is done by algorithm based on large sets of big data. These sets of big data include the rider's personal information, traffic situation, demand-supply situation etc. Therefore, algorithmically determined pricing for each rider is different considering these large data sets.

In Re: Matrimony.com Limited[3] the CCI held that Google LLC is abusing its dominant position in "online general search advertising market in India". It was stated that Google was in a position wherein it can control the algorithm which was pivotal for generating the search results. Thus, such an algorithm was capable of intervening in the automated process and affecting the ranking and relevance of the results.

[2] Case No. 37 of 2018 CCI
[3] Case No. 07 of 2012 CCI

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This resulted in search bias wherein equally efficient websites search service providers were not able to acquire large amounts of business-like Google, and this eventually led to foreclosure in the market.

The relevant market for e commerce platforms shall be the online market solely and should not include offline market in its ambit. Big data plays a cardinal role in determining the tastes and preferences of the buyers with the help of online advertisement. If we investigate this issue in depth, we can clearly understand that most of us substitute between different e commerce platforms to get the best deal. The transportation costs for travelling to offline stores too affect our decisions for shopping. Other factors such as time constraints and COVID has also played a very important role in determining the relevant market for e commerce platforms. These factors have not been addressed in the definition of relevant market under the Competition Act, 2002. The CCI still has a rudimentary and different footing determination of relevant market for big data. Following are few judgements given by the CCI wherein it has taken a completely different approach in understanding the issues of determination of relevant market for e commerce platforms.

Ashish Ahuja v. Snapdeal[4]: In this case, the CCI in answering the issue of relevant market has said that the buyers of the goods and services tend to switch between online and offline markets as the percentage of discount and their experience in shopping plays a vital role in deciding where the products or services can be purchased from. An increase in price at one segment can make the buyers shift to another segment. Therefore, the CCI, while ignoring the affect of big data in online market, said that both the online and offline markets are not two different relevant markets and only their channel of distribution is different.

The same has been decided in other cases such as In Re: Confederation of Real Estates Brokers Association of India[5], In Re: Jasper Infotech Private limited (Snapdeal case)[6], and In Re: Deepak Verma[7] wherein it has been quoted by the CCI that "e-commerce platforms have an alternate distribution channel and they are not a separate relevant market." These decisions of the CCI have established a phenomenon that since both these platforms are not in a dominant position in their specific relevant market, they cannot be said to be abusing the dominant position thereby contravening the provision of Section 4 of the Competition Act, 2002.

The major lacuna in the abovementioned rulings of CCI is that the advantage that the e commerce platforms have over offline markets with the help of big data and other socio-economic factors have been completely ignored. Resultantly, the relevant market for both the segments have been held to be one.

[4] Case No 17 of 2014 CCI
[5] Case No. 23 of 2016 CCI
[6] supra
[7] Case No. 34 of 2016 CCI

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There are other provisions in the Competition Act, 2002 that speak of anti-competitive agreements. Section 3 of the Act prohibits such agreements that lead to appreciable adverse effect in the market. The said provision is premised on any form of agreement. The issue under such agreements are that they are mostly confidential and inaccessible. The advertisers at e commerce platforms use algorithms based on big data for promoting sellers online. The terms of agreements in such instances are mostly vague. It allows the advertisers/hosts to amend and delete lists of sellers or functionalities on the website. Further, it permits the sellers to have complete control over their own and hosts websites. Therefore, such issues can be challenged by virtue of Section 3(4) or Section 3(1) of the Act independently but again as the agreements are confidential and it is open to complete discretion of the enterprises to amend or or modify the same, challenging the same can be difficult.

Furthermore, Section 19(3) talks about the factors pertaining to the anti-competitive agreements such as the creation of barriers or foreclosure of the competition by hindering market entry. Evidently, a market can be foreclosed for the competitors if the parties to the agreement hold substantial market power. In the category of decisions by the various antitrust regulators worldwide, it has been stated that market power also contains “big data”. Thus, the assessment of these factors must be in accordance with the facts and circumstances of the case.

Therefore, to check the possibility of an appreciable adverse effect on the competition (AAEC), the CCI considers the existence of vertical agreements or horizontal agreements between the enterprises. However, enterprises which are not related horizontally and vertically and are in possession of ‘big data’ can give rise to anti-competitive practices by causing AAEC in the market and it is not always necessary that the enterprises will come under the purview of such agreements as construing the agreements too can be quite difficult.

Advantages and disadvantages of data processing

The data searched, and keywords entered by us are identified by the online websites. These online websites sell this data further to the advertisers and earn profits out of it. Therefore, by closely tracking the user’s choice, taste and preferences, big data helps to understand the consumer demand. It also assists in improving the quality of products and services and their targeted advertising. Since big data acts as predictive analytic, it helps the manufacturer on supply side in decision making and it also increases the operational efficiency of manufacturers.

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From analyzing the concept of big data from a competition law perspective one can arrive at a different opinion. For processing big data, a complex system of software is required which is quite expensive and can be afforded solely by companies with highest turnover in the world. Resultantly, the dominant companies in the market are enabled to enter into exclusionary agreements with the third-party data analytics for the purposes of getting big data sources solely for themselves and advertise exclusively for them. They can also foreclose the competition by not letting the users use any of the other online websites of their competitors. We have our laws that deal with the concept of abuse of dominant position by an enterprise. By looking into the various provisions of the abuse of dominance we can say that our laws act as watchdogs to see if any enterprise is taking advantage of its position in any way possible. Data analytics can also be used to monitor compliance with vertical and horizontal agreements such as cartels and resale price maintenance by seller. Due to these antitrust agreements into practices, a lot of countries have passed laws against it. With the help of the above discussion we can say that big data can have negative impact on competition in the market.

In India, innovation and technology driven market is growing swiftly and is witnessing a progressive surge. With the development of technology in India the habits of consumers are changing. Now they prefer to buy their products online than to take the stress of going to store and stand in queue. We are becoming more of digital tech savvy. But the problem with consumers in India is that they are not sectile towards privacy yet. Therefore, it would be a suggestive measure towards the Competition Commission of India to work on privacy issues as soon as possible. With regard to privacy concerns, although the CCI in its *WhatsApp* order, had held that any breach of the Information Technology Act, 2000 did not fall within the purview of the Competition Act, 2002, it remains to be seen if and to what extent it will take clues from the EC in considering privacy concerns as a relevant parameter of quality of the goods or services offered in its competition assessment. Nonetheless, corporate giants are encouraged to follow the debate/ enforcement activity in this sphere closely. It would be prudent for such enterprises to consider assessing their data driven business models/compliance policies against the continuously evolving competition law standards.

6. Case analysis

- **EU Commission Decision permitting the Google/DoubleClick transaction[8]**

This judgement given in this case mainly provides guidelines as to the effect of merging of two online search engines in the market and whether such merging is anticompetitive or not. The brief facts of this case are that

[8] Case No COMP/M.4731 – Google/ DoubleClick

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there are two search engines in the relevant market, Google and DoubleClick. Google is a online advertising space provider on its own site whereas DoubleClick acts as a provider of ad serving technology. Here, Google bought DoubleClick for 3.1billion $. With this purchase a lot of issues came up. The EU Commission provided judgement by addressing these issues. In the decision given by the EU Commission it was said that the Google DoubleClick transaction will not impede the competition in the market because already number of search engines existed in the market. Even though Google and DoubleClick were dominant in their respective market, their transaction could not be said to be anticompetitive because many search engines were already present in the market, towards which large number of consumers were shifting to. The Commission also found that competition would not be impeded as a result of the concentration because the merged entity would continue to face strong competitive pressure from a number of other competing ad networks and ad exchanges. It was further added by the commission that the merged entity would not have the incentive to close off the market shares because such activities were very less likely to be profitable. It was also found out that both these enterprises were not exerting major competitive constraints against each other and therefore, could not be said to be each other's competitors.

The Commission took the view that the proposed acquisition of DoubleClick by Google would be unlikely to have harmful effects on competition, either in the market for display ad serving technology or in the market for online advertising, or any of its possible sub-segments, and cleared the transaction on 11 March 2008. This case illustrates how the Non-Horizontal Merger Guidelines can be applied, grounded on sound economic principles and supported by quantitative and qualitative information on the market at hand.

- **EU Commission decision on Facebook/WhatsApp transaction[9]**

The facts of this case state that both Facebook through Facebook Messenger App and WhatsApp offered applications to smartphones where consumers could use these apps for sending text messages, pictures, voice message and video calling services. At the time the of Commission's decision Facebook had 1.3 billion users worldwide out which 250-350 million were users of Facebook Messenger App as well, and WhatsApp had around 600 million users worldwide and particularly in Europe. In the year 2014, Facebook bought WhatsApp, whose turnover was only around 10 million Euros, for USD 19 billion.

The relevant market in this case was the social networking apps. To determine relevant market, the commission had to investigate the market for consumer communication apps and telecom operator services. It

[9] Case No COMP/M.7217

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was concluded by the Commission that both consumer communication apps and telecom operated services were substitutable to each other and hence their relevant market could be same. But with increase in the popularity of the social networking sites and consumer communication apps, the Commission said that relevant market for WhatsApp was market for social networking sites. Also, WhatsApp fell into the category of consumer communication app as well as social networking sites.

On 3rd October 2014, the EU Commission cleared out the case by giving the reasoning that even though Facebook and WhatsApp constituted most of the market power, they were not in a position stop or reduce their competition in the market. Also, Facebook and WhatsApp were not close competitors and therefore after their merger also, a lot of consumer communication apps will have free access to participate in market. The merger cannot result in removing competition from the market. The Commission also concluded that no matter what the precise market boundary for social networking sites is, and whether WhatsApp is a social networking site, both Facebook and WhatsApp are distant competitors. It also said that whether Facebook would start advertising data on WhatsApp or take data from WhatsApp for the purpose of advertising, it would still not pose a threat to the competition in the market because there exist many other social networking sites that can advertise freely. Therefore, it can be said that the Facebook/WhatsApp transaction lacked the effects of anticompetitive agreements.

- **Karmanya Singh Sareen v. Union of India**[10]

This case addresses the misuse of big data under the Indian competition law regime. The issue herein pertained to privacy of consumers under WhatsApp. In this case a privacy activists challenged the new terms of service of WhatsApp through a writ petition by virtue of which the said app could share the data of its with Facebook. WhatsApp was launched in the year 2010, and it had promised complete privacy protection to its users. It was guaranteed by the app that the data or details of its users will not be shared in any manner. However, the change in ownership of the app by acquisition through Facebook for $19 billion brought certain amendments to the privacy policies of WhatsApp. After its acquisition, the account information of all such users who did not opt out of the new terms of service was shared with Facebook as well as other group companies. The said data is now a subject to Facebook's deep and sophisticated data mining mainly done for the purpose of targeted commercial advertising and marketing. The petitioners in this case claimed that this unipartite and coercive action of revising the terms of service and taking away the privacy protection of users

[10] W.P. (C) 7663/2016, High Court of Delhi

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contradicts the most valuable, basic, and essential feature of WhatsApp that was complete security and protection of privacy.

Counsels for WhatsApp on the other side, in their counterarguments said that WhatsApp values privacy of its users, which was evident from the fact that (i) it did not ordinarily retain messages of its users and (ii) offered full end-to-end encryption for its services such that WhatsApp and third parties cannot read user messages. Moreover, all those users who are unwilling to share their account information with Facebook / other group companies are free to delete their WhatsApp account, using WhatsApp's in-app 'delete my account' feature. On completion of these steps, the information of the users that is not required by WhatsApp to run its operation stands deleted. Specifically in respect of revision of its terms of service, they averred that WhatsApp had provided advance notice to its users, and only those users who have chosen to continue with the service are being bound by the revised terms, including terms relating to data collection and usage.

In response to the arguments of Counsels, petitioners contended that the consent obtained by WhatsApp for its new privacy policy under the revised terms of service is a mere fallacy as majority of population in India who use this app are not well equipped to read or comprehend the meaning and importance of its terms of service. This clearly gives the new terms of agreement a coercive position over its consumers. Further, it was also argued that this change in the privacy policy is contrary to the principles of estoppel and is against the right to privacy guaranteed under the Constitution of India.

On finding that the terms of service of WhatsApp are not traceable to any statute, the Court, at the outset, ruled that the present petition being in respect of a contractual dispute was not amenable to the writ jurisdiction of the High Court. Yet the matter beforehand was considered by the Hon'ble Court on submissions made by both the parties.

The Court held that users could not compel WhatsApp to continue with its original terms of service when the original terms entitled WhatsApp to unilaterally change its privacy policy and stipulated the continued use of WhatsApp service, post amendment of privacy policy, to be considered as "deemed consent" to the terms of the revised policy. The Court also observed that no relief can be granted under the Constitution of India as the legal position with respect to the "right to privacy" is, yet undecided. The Constitution does not specifically guarantee a right to privacy and the judicial interpretation that the Constitution does provide a (limited) right to privacy – primarily through Article 21. The same has been challenged before the Supreme Court of India in

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the pending case of K.S. Puttaswamy v. Union of India[11]. As such, further to WhatsApp's terms of service, the Court (i) directed WhatsApp to completely delete information / data / details of those users who have chosen to delete their WhatsApp account and (ii) so far as those individuals, who have opted to continue with the use of WhatsApp service, are concerned, restrained WhatsApp from disclosing their information / data / details, which was collected under the terms of the original terms of service, to Facebook or any one of its group companies.

One glaring failure of this case has been Court's failure to consider the sanctity of the user "consent" as regards disclosure of their information / data / details to Facebook and/or other group companies and usage of such collected data for the purposes of gaining advantages through such recorded data and the scope and limitations thereof. In the decision, petitioners had contended that many Indian WhatsApp users were unable to understand and act towards acceptance or rejection of new terms of agreements. As majority of them are incapable of understanding the terms of agreement, they clearly cannot be said to be in a position wherein they can be aware of what it is that they are consenting to under the new terms of service remained. This issue has remained unanswered by Hon'ble Court in its impugned judgment.

This case is a clearly provides a picture wherein lack of understanding of the concept of big data has been portrayed. The meaning of consent and privacy have not been dealt herein and the relevant market for the host i.e., Facebook has also not been discussed. The author believes that issue of free consent and specific information of the terms of agreements should have been addressed by the Court. In doing the same, it is suggested that the terms of agreements should have been discussed publicly by resorting to the sources of news and television media. This too, will involve high vigilance on the part of CCI towards understanding and having record of agreements of online platforms. This lack of clarity in the scope of "consent" under the existing laws highlights the need for a stronger regulatory framework that will be required with boon in digital era for governing data collection and processing. A mere self-regulation to meet the challenges cannot be enough to curtail the evolving issues of big data at online platforms, be it online shopping platforms providing products or services or the social media platforms.

- **EU Commission on Microsoft/LinkedIn transaction*[12]***

[11] (2015) 8 SCC 735
[12] Case M.8124 – Microsoft / LinkedIn

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On 6th December 2016 the EU Commission approved Microsoft acquisition of LinkedIn subject to a series of commitments made by them. This case involves issues in which data is the key asset. The main issues of the case were that the merged entity could pose as a threat to the entry of new entities in the market or for expansion of the enterprises. It could also reduce competition for each other by holding larger market share. The second issue was that both being major powers in the market, had enough data, and their merger could result in cutting competition for each other in the market. The Commission dismissed these issues by saying that even if the Microsoft and LinkedIn combined their datasets, there were plenty of datasets available by the consumers on different sites which were in no way could be exclusively controlled by Microsoft.

- **Federal Trade Commission on Facebook/Instagram transaction decision**[13]

In this case Facebook acquired Instagram in the year 2002. Instagram is a social networking app that could do more than what Facebook did in a better and faster way. It had gained over 30 million consumers within few years. It was also free of cost. When Facebook acquired Instagram, two issues came up in the eyes of Commission. They were, firstly, how could Facebook acquire Instagram when they were the natural competitors? Secondly, aren't antitrust laws supposed to stop companies from buying their rivals in order to achieve market dominance? The Commission on addressing these issues, delivered its judgement by saying that since Instagram was not selling its data to the advertisers and making profit out of it, there is existed no competition in the market. Also, both these companies provided free of cost services and were said to be working for time and attention. Therefore, it was held that Facebook's acquisition of Instagram was not against the antitrust laws.

But until then it was not realized by the Federal Trade Commission and the European Commission that these companies never worked for time and attention. Even they work as competitors and focus on earning s many consumers and profits in the market as possible. Such frequent acquisitions and mergers cannot be said to be within the purview of the antitrust laws. They not only work in creating entry barriers but also acquire dominant position in the market. The antitrust decision givers need to understand it that with the development of big data, such issue need to be seen and addressed cautiously so that it does not affect the market negatively in future.

7. Conclusion and Suggestions

[13] FTC MATTER/FILE NUMBER: 092 3184 182 3109 C-4365

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The relevance of big data is increasing with time. There is no such digital/online market that is untouched by the rise of big data worldwide. Big data has helped in bringing the advertisers and consumers all around the world under one roof. It can be said that big data is the trend of the market which makes advertising and selling of goods and services so easy for the manufacturers or enterprises. In past decade big data has seen a rapid growth worldwide. It has also made very easy for the customers to purchase their products with the help of relevant advertisements, which suit their tastes and preferences.

The emergence of the big data so far, in its market has mainly faced issues such as abuse of dominant position, antitrust policies and issues related to mergers of big data companies. These issues have been discussed in the cases above mentioned. All these issues are dealt by answering the question of what is the relevant for these big data enterprises. The role of relevant market acts as a decisive factor in addressing the issues involving big data.

India is still developing in terms of having its own social networking apps or sites, or even the search engines or consumer communication services. Therefore, in India, not much scope is there to address issues involving big data. Today, the world is mostly dominated by the US or European social networking sites, search engines and even the consumer communication apps. Therefore, we mostly have the decisions of the European Commission or the Federal Trade Commission to guide us on complex issues of big data. The Indian Competition law is still at a developmental stage on dealing with such evolving issues but, as said above we do not have such developed system of data sharing.

By looking at the topic of big data and competition law, discussed above we can arrive at the conclusion that that big data, to an extent, can be against the antitrust policies. It clearly acts as a tool in cutting down competition by the enterprises in their market. The facts of the cases, however construed, do not provide clarity on how big data cannot be said to be against anti-trust policies. Since big data has evolved over time, all around the world, the search engines and social networking sites are not limited in the market. There are many of them that act as competitors against each other. Therefore, it can be said that it is not a limited sector under competition law. Though it helps in the growth of other sectors of online market/ e-commerce platforms all over the world by providing data and a platform to advertise to the enterprises, it also provides dominant position to huge conglomerates in the market.

The antitrust laws relating to acquisitions and mergers of social networking sites and search engines need to be amended or modified so that they can address the complex issues arising these days. It needs to be made clear that no such judgement is delivered that has a loophole in it and can affect the market in future. A record

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of agreements of online enterprises shall be made that can be made public so that the consumers can have knowledge and clarity of the terms of such agreements. The meaning of consent and relevant market, in context of online platforms, needs to be expanded and a further clarity needs to be provided on the same.

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