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DAVID'S CHALLENGE TO GOLIATH, WITH A TWENTY-FIRST CENTURY TWIST

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DAVID'S CHALLENGE TO GOLIATH, WITH A TWENTY-FIRST CENTURY TWIST

Sushila* & Shikhar Sarangi**

[Abstract: *The intersection between law and technology is ever-evolving, and a substantial lag between the two is created as the former develops at a pace far slower than the latter. Accordingly, there exist several conflicting legal studies that interpreted companies' actions in the digital space. The basic idea was to reconcile some of these interpretations and to provide a fair understanding of antitrust in a dynamic business environment. The essay sets out to find the main argument behind the contention that the present competition law cannot deal with digital platforms. In order to do this, doctrinal evidence was examined pertaining to various case laws around the world involving anti-competitive actions of the companies to identify the common problems that arose while adjudicating on those issues. One On the basis of such research, a few key points of difference between antitrust in the physical and digital plane have been delineated. These differences, along with the author's understanding of the present competition law helped in the formulation of certain recommendations that, as per the opinion of the author, would need to be reflected in an evolved competition law in order to rein in digital giants. This essay briefly delves into the prospective trajectory that invasive technologies may undertake and highlights the legal challenges that would inevitably arise insofar as their regulation is concerned. As such, the essay does not provide an exhaustive analysis, nor can it, given the evolving nature of the topic. However, it does capture the very essence of the answer to the question of antitrust in the digital space and such a paper could eventually help formulate broad policies on the issue.*

Keywords: *intersection, antitrust, dynamic, competition, plane, trajectory, policies***]**

I

TRUSTING THE ANTITRUST FRAMEWORK

Competition In Business and Its Definition

With the advent of modern economics as propounded by Adam Smith, the market became the all-encompassing force that pervaded our lives in so many ways. Competition law has existed since the Romans sought to regulate corn trade[1]; never prior to the birth of global economics did arise companies and organizations that could illegitimately control their own industry. The Ist industrial revolution ushered in unprecedented modes of production and industrious individuals thus had the liberty of using any accumulated advantage to scale up their companies and make use of illicit tactics against budding competition and colluding to work against the best interests of the consumer.

These illicit actions, whether they be cartel formation or establishing dominance are some in the vast gamut of anti-competitive practices. Simply put, anti-competitive practices are acts and omissions violating ethical business norms by putting the consumer at a disadvantage by collusion and/or restricting the trade of businesses working on an equivalent plane and/or restricting the trade of businesses working in a different industry, but are relevant to the operations of the predatory organization. This definition is not exhaustive nor do is it claimed to be. It merely forms the basis of the hypothetical companies that will be utilized to formulate and carry forward the search for a comprehensible definition. While considering elucidating on anti-competitive practices, the word monopoly will crop up time and again. It must be kept in mind that a monopoly or attempts to be a monopoly are not necessarily what is considered illegal, but rather unreasonable attempts to do so. It is important to note this distinction as the word itself can induce disdain within the mind of the reader. The aforementioned definition provided of anti-competitive practices is a framework within which both the history and further evolution of competitive law will be discussed, and this framework would be an attempt to highlight the criterion on the basis of which an act or omission in the digital space can be considered predatory.

The Justification Behind Competition Law

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[1] Henry Babled, *De La Cure Annone chez le Romains*, FACULTE DE DROIT DE PARIS.

The desire to curb unreasonable practices that lead to monopoly formation stem from the basic requirement to maintain a fair market system, the disruption of which will cause damage to the interests of the majority of its stakeholders. This basic requirement is central to the formulation and codification of competition law. The provisions of competition law, regardless of jurisdiction, seek to maintain the abstract free market. The specific provisions of each law are irrelevant here. What is important to consider is the objective of competition law and analyze the general methods employed by regulatory authorities to promote competition and disincentivize unethical practices. A more pragmatic viewpoint also highlights the importance of competition law as competition promotes economic growth by facilitating an environment encouraging innovation and necessitates the efficient acquisition and utilization of resources, leading to a cheaper standard of living for all.[2]

Besides that, competition breeds innovation. In a competitive sandbox, theoretically, participating players are incentivized to invest in the quality of their product and/or look into cost of their production process to increase profits as a unilateral increase in prices will be disastrous to company growth (due to the presence of cheaper alternatives in the same industry). Ultimately, due to companies continuously improving their products or making the production process cheaper, it is the consumer who benefits from competition. Such a simplistic environment is merely demonstrative of the logical result of competition ceteris paribus. Regardless, it is a good starting point to comprehend the benefits of a robust competition law and consequently its objective.

Factors that Determine Efficacy of Competition Law

The effectiveness of competition law enforcement depends on several factors such as level of economic development of the subject country, business models followed by the companies in that country, extent of regulation by authorities in non-competitive spheres and economic realities.[3] In 1979, 24 countries had some form of competition law; by 2007, this number rose to 102 countries.[4] The reasons for countries adopting competition law are as varied as the factors on which its enforcement depends. Some reasons may include (but are not limited to) consumer lobbying, international agreements, economic reforms and increasing industrialization.[5]

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[2] John Davies and Ania Thiemann, *Competition law and policy: Drivers of economic growth and development*, OECD, Issue 4 (2015).

[3] Franz Kronthaler, *Effectiveness of Competition Law: A Panel Data Analysis*, Halle Institute for Economic Research, IWH Discussion Papers (2007).

[4] *Supra* note 4.

[5] *Supra* note 7.

Specific reasons aside, a steady uptick in the number of countries enacting competition law suggests that it has been effective to a large extent, in providing the aforementioned benefits arising out of a competitive environment. This overview of competition law, its objectives, factors which influence its regulation as well as its benefits will serve us well upon discussion of competition law in the digital space. During that time, a constant reference will be made to the general framework of the anti-competitive rules and subsequently build upon it to fit in the changing digital landscape.

II

DIGITAL ROADBLOCKS

Increasing digitalization

The premise of this study into the efficacy of competition law is predicated on the notion that current antitrust frameworks, in India and abroad, are not equipped to deal with the mounting challenges posed by the dynamic digital world. On the back of severe quarantines around the globe, ever more consumers settled into the new normal of relying on apps and contactless services for the mundane tasks, doing grocery shopping, food delivery and parcel delivery through a few swipes and taps.[6] That brick-and-mortar giants such as Walmart and Target made aggressive strides into the e-commerce space speaks volumes of consumer reliance on the distance economy.[7] The vast sea of the web requires a few large ships to navigate through it, lest consumers drown in the raging waters of multinational monopolies.

[6] UNCTAD, *How Covid-19 triggered the digital and e-commerce turning point* (Mar., 2021) *available at-* https://unctad.org/news/how-covid-19-triggered-digital-and-e-commerce-turning-point (last visited 3 Mar., 2023).

[7] Sarah Falcon, *What we learned from Amazon, Walmart and Target*, OBJECT EDGE (Apr., 2021) *available at-* https://www.objectedge.com/blog/what-we-learned-from-amazon-walmart-and-target (last visited 6 Mar., 2023).

Figure 1: Percentage of online shoppers making at least one online purchase every two months

Source: UNCTAD and NetComm Suisse eCommerce Association

The current competition law in India has previously been capable of addressing anti-competitive practices, even against large tech corporations like Google[8] and Apple.[9] Despite this, certain lacunae remain as the Competition Act 2002, was last amended in 2009. In 2018, a Competition Law Review Committee (CLRC) was set up to recommend changes to the Act in light of changing business models and emergence of disruptive businesses. The CLRC submitted its recommendations in 2019. Subsequently, the Competition (Amendment) Bill, 2020 was drafted in accordance with such recommendations and the Bill was put up for public consultations. and is open for public comment at the time of writing. Based on the feedback received, the Competition (Amendment) Bill, 2022 was introduced in the Parliament in August 2022 and was referred to the Parliamentary Standing Committee on Finance. The Committee submitted its report in December 2022 with its recommendations. Thereafter, the Bill was passed by the Lok Sabha on 29.03.2023 and by the Rajya Sabha on 03.04.2023. The Presidential assent was accorded on 11.04.2023. The thrust of the amendments is to facilitate ease of doing business by providing regulatory certainty, framework for faster market correction and a trust-based business environment. The Amendments broaden the scope of anti-competitive agreements; include facilitators of certain anti-competitive agreements within the framework of law; reduce time limit for approval of mergers & acquisitions; introduce deal value threshold as an additional criteria for notifying M&As; provide limitation period for filing

[8] *Matrimony.com Limited v. Google*, 2018 S.C.C. OnLine C.C.I. 1.
[9] *Together We Fight Society v. Apple,* 2021 S.C.C. OnLine C.C.I. 62.

cases relating to anti-competitive agreements and abuse of dominant position; introduce settlement & commitment framework; broaden and deepen scope of inter-regulatory consultations; incentivize parties in an ongoing cartel investigations in terms of lesser penalty to disclose information regarding other cartels (leniency plus).

This step in the right direction notwithstanding, there does exist a requirement to frame an Act that specifies the nature and scope of anti-competitive practices in the digital space and with it, can lay down punishments proportionate to the actions of the accused. With this very sentence, several cans of worms are opened. On the basis of the previously provided definition of anti-competitive practices, how are acts or omissions on the digital space to be determined as unreasonably monopolistic? In which way can the extent of harm caused by the illicit actions of organizations online to be calculated? Can advances in the digital space rightly be compared to the physical plane which is bound by tangible assets and liabilities? Decoding these questions begins to reveal the fundamental and inherent difficulties of dealing with the vast physical space and is precisely the reason why the Competition Act, 2002 can no longer suffice for tackling antitrust issues.

Physical v. Digital Divide

The limitations of the current competition laws are most starkly visible on the precipice of the vast chasm between the physical and digital. This divide will continue to grow as the digital domain becomes ever more complex, and there emerge more paths to pursue anti-competitive practices. Nowhere was this divide more visible than in the recent slap on the wrist that the South Korean Parliament gave to Apple and Google. PlayStore and Appstore, the primary application distribution and downloading platforms of Google's Android and Apple respectively, mandated that developers had to receive payments for their apps through the default in-payment mechanism set within the store. In this arrangement, as much as 30% of revenue could be levied on each transaction by the aforementioned companies, taking away from developers the autonomy to sell on their terms. In light of this, the South Korean Parliament removed this mandatory requirement, and added provisions in pursuance of which Google and Apple must respond to the concerns of registered app developers.[10]

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[10] LIBRARY OF CONGRESS, *South Korea: Amended Telecommunications Business Act Will Ban App Payment Monopolies* (2021) available at- https://www.loc.gov/item/global-legal-monitor/2021-09-16/south-korea-amended-telecommunications-business-act-will-ban-app-payment monopolies/#:~:text=Article%20South%20Korea%3A%20Amended%20Telecommunications%20Business%20Act%20Will%20Ban%20App%20Payment%20Monopolies&text=On%20August%2031%2C%202021%2C%20the,on%20mobile%20app%20developme

The same case law, if modified to fit the physical realm, would perhaps involve Apple and Google suggesting that agriculturalists could sell their products only through their system (despite the presence of alternatives) and for the provision of such service, a 30% commission will be charged. Immediately, it is possible to identify the vertical constraints that Apple and Google are imposing on the producers. The situation can be resolved easily, with the dominant organizations having to relinquish control over the supply chain. This begs the question – why was the same problem so difficult to identify and resolve in the digital realm? Apple has been charging the industry standard 30% cut for nearly two decades, and this was brought to the spotlight when Google decided to do the same in 2020.[11] The complex and dynamic nature of the digital space requires more considerations to be kept in mind while adjudicating such a case. Tools used to identify anti-competitive practices such as market share or transitory price increase test are inadequate, given the online nuances in which the number of consumers bearing the brunt of greater prices does not tell the full story. Contrast this with our hypothetical agriculture market scenario where the influence of the middlemen remains limited to the consumers on one side and producers contracted with on the other; their investment in other sectors is limited. On a much larger digital scale, the gargantuan centrality occupied by Google and Apple in the app market keeps in check the autonomy of even larger developers such as Epic Games[12] and this monopoly in the chain between consumer and developer yields tremendous profit, further used to create an anti-competitive environment in other sectors.

This distinction between the digital and physical manifests itself in the above case in terms of the scope in which facilitative platforms can influence the parties involved in the system; and by taking advantage of such dominance, their size snowballs in more than one sector, creating such situations where a central organization acquires a large portion of the market share in several areas of industry and service and the digital nature of their actions contains within it the inherent advantage of exponential expansion, taking advantage of which a company may enter into a position of monopoly. Taking this argument further, the distinction between the physical and digital includes with it the problem of measurement of intangible influence.

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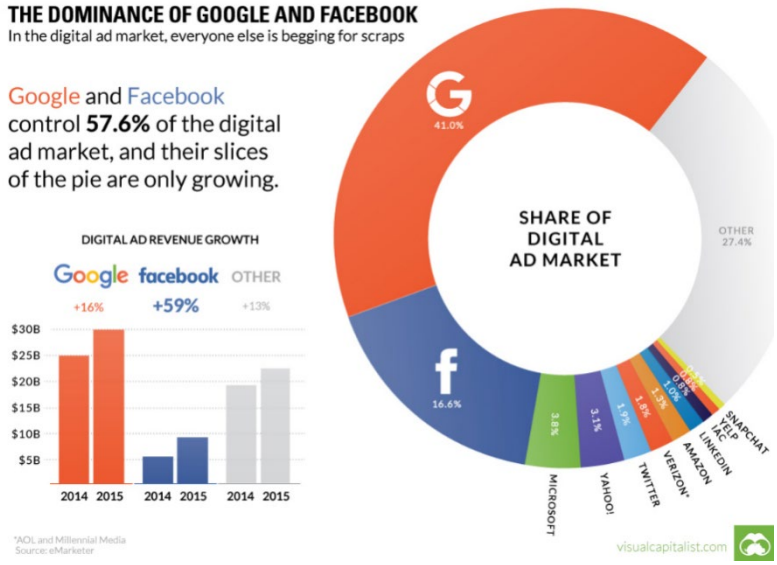
nt%20companies. (last visited 9 Apr., 2023).

[11] Austin Carr, *Apple's 30% fee, an Industry Standard, is showing cracks*, BLOOMBERG (3 May, 2021) *available at*-https://www.bloomberg.com/news/newsletters/2021-05-03/apple-s-30-fee-an-industry-standard-is-showing-cracks (last visited 5 Apr., 2023).

[12] *Epic Games Inc. v. Apple Inc., Case No. 4.*

The unassailable digital lead



Consider that in February of 2021, a new law came into effect in Australia, requiring digital moguls Google and Facebook to pay news content creators for the privilege of displaying articles on their own platforms. By definition of Indian law, the previous arrangement could have been classified as anti-competitive, in that, Google and Facebook abused their dominant position of being news distributors, by virtue of which, they took an unreasonable share of revenue.[13] Open and shut case, right? Consider the nuances of this. How much benefit do Google and Facebook do to news agencies by making their work more accessible? When one purchases a newspaper, it can reliably be predicted how many articles will be read or at least will not be read. The same can be calculated online through clicks, but more sophisticated algorithms and data storage is required to not only see how many are read through until the end, but also which articles are read through. This data is not necessarily shared with news agencies and most certainly not with consumers. The algorithm that advertises one news article over the other uses data patterns based on our own online behaviour and searches to give us what we want. Taking this into account, there can be no denying that in an increasingly digital world, Google and Facebook algorithms essentially decide what news content we are exposed to. It becomes clear as to why the Australian government is so keen to draw the line.

The complex algorithms that shape our opinions keep not just Google and Facebook at the top of the pile, but also the dominant news houses. The content of news media displayed on the digital space is ostensibly catered to our

[13] Competition Act, 2002, S.4(2).

preferences and yet, the lack of transparency (and comprehension) in regards to these algorithms give a huge advantage to both the platforms (Google and Facebook) and also powerful media houses who already have a name for themselves beyond the web, as these lines of code can keep us constrained to consuming content through a certain medium, created by certain companies. The argument that suspicions cast on these lines of code is unwarranted is a specious one for if one were to presume that the algorithms work as presented, it still limits consumption of content to simply a few organizations considering the fact that the curator sitting behind our screens assorts and recommends content on the basis of quantity of clicks, which as mentioned before, larger companies are more likely to receive due to their presence in the physical space. The vicious cycle continues - one click leads to more and more clicks lead to us being encapsulated in the sphere of just a few corporations, completely unbeknownst to us. This is a critical difference between the physical and digital. A seemingly innocent business practice of curating content with the help of algorithms (purportedly for the benefit of consumers) can lead to devastating effects on consumer choice and autonomy. In order to regulate it, authorities need to observe digital advances through a complex lens of future forecasts, lest the organizations of tomorrow take an unassailable digital lead.

Utilization of Consumer Data

The use of consumer data has become an integral part of modern business practices, and as a result, there has been a growing concern regarding its potential anti-competitive implications. However, it is important to recognize that the mere possession or utilization of vast amounts of consumer data is not inherently anti-competitive in itself. Data-driven insights offer numerous benefits, such as enabling companies to better understand their customers, personalize marketing campaigns, and improve their products and services. These practices can enhance the overall customer experience and contribute to a more efficient and competitive market landscape. Moreover, data aggregation can level the playing field for small businesses by giving them access to a wealth of consumer insights that were previously only available to large corporations. This democratization of data can foster innovation and competition by empowering businesses to make more informed decisions. That being said, it is crucial to acknowledge that the misuse of consumer data or monopolistic control over data sources could lead to anti-competitive behaviour. Regulators and policymakers must strike a delicate balance between promoting data-driven innovation and safeguarding market competition by monitoring the accumulation and use of consumer data. As such, it is important to consider whether the current competition law contains

sufficient provisions to deal with this issue.[14] The author does not claim here to refute their arguments, but rather to pose our own perspective, one that does not contain the empirical analysis or due procedure necessary to be considered a challenge to established works, but one that follows a particular, logical train of thought. In our opinion, the considerable (partially inherent) advantage held by technology giants in terms of consumer data undermines competition because it is not a natural barrier to entry in the industry, but rather one that has evolved into being a prerequisite in order to challenge the dominance of certain companies. The situation has become so as digital services depend greatly on how much easier they can make life for their consumer. Consider a hypothetical micro-blogging platform named 'Litter'. Can Litter really compete with Twitter on a very large scale, even if it offers different features, given that Twitter's algorithm is already greatly refined through tons of consumer data, utilized in machine learning, and keeps them on that platform regardless of the emergence of the alternatives.

This is only one of the ways through which consumer data undermines competition. The use of consumer data is neither unreasonable nor illegal, but its effects warrant the question of whether it should be an issue under the new digital antitrust framework. All of this is without suggesting the harvesting of consumer data without their consent which is certainly an illicit practice.[15] Our solution to this problem will be provided within a few paragraphs.

III

REGULATING THE IMMEASURABLE

The Specialized Institution

The vast, seemingly infinite digital space cannot be governed by a single, monolithic law. In order to rein in a dynamic sector, a similarly evolving law is required. Even so, there needs to be a balance between the interests of the State and that of Big Tech. Any regulating law which gives far too much power to the State eventually leads to a breakdown of trust, leading to adverse consequences for the economy. In India, excessively harsh laws to clamp down on digital content[16] provoke fears that the government will exercise

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[14] Joe Kennedy, *Should Antitrust Regulators Stop Companies from Collecting So Much Data?* Harv. Bus. Rev. (17 Apr., 2017) *available at-* https://hbr.org/2017/04/should-antitrust-regulators-stop-companies-from-collecting-so-much-data (last visited 7 May 2023).

[15] Personal Data Protection Bill, 2019, Clause 5, part (b).

[16] Saheli Raj Choudhary, *India wants to cut Big Tech down to size*, CNBC (20 Apr., 2021) *available at-* https://www.cnbc.com/2021/04/20/indias-social-media-law-puts-big-

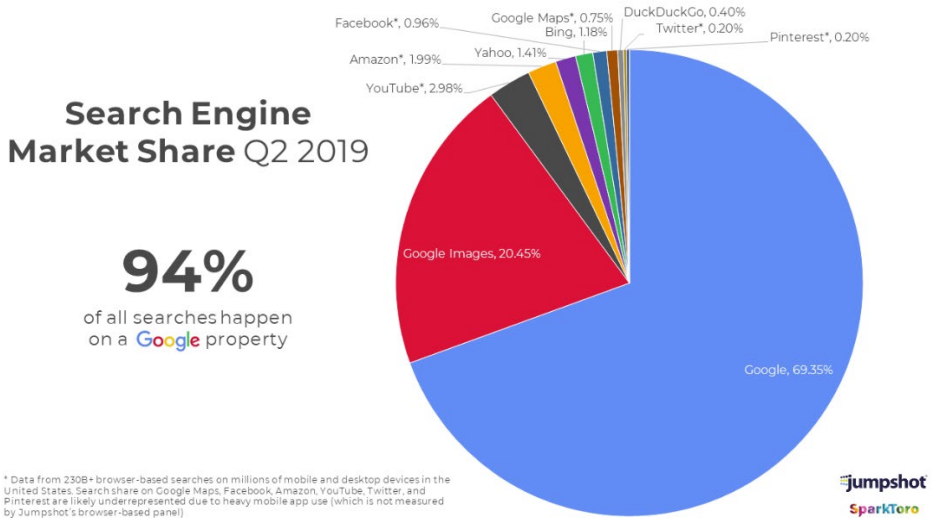
disproportionate control over enterprise operations in the name of antitrust. In light of this, it is increasingly crucial to highlight what is and is not 'anti-competitive' in the digital realm. However, as has been repeated ad nauseam in this paper, the definition of anti-competitive action given in the beginning cannot begin to encompass the scope of what is possible in the world of 1's and 0's. *Ipso facto*, in consideration of the need to adjudicate in such matters, there must exist an institution, autonomous of the government, that can distinguish between the reasonable and unreasonable digital actions of companies.

Moving forward, such an institution, an offshoot of the CCI, should have the capability to decide on online antitrust on a case-by-case basis, a scenario better than a possibly draconian blanket law deciding what constitutes as 'anti-competitive'. This institution should be statutory and on par with the National Green Tribunal (NGT), having the ability to take *suo motu* cognizance of cases as well as having original and appellate jurisdiction over digital antitrust cases. The decisions of this body should be challengeable only in the Supreme Court, and the *ratio decidendi* of this court should be binding on future cases of the type (but still leaving room for evolution of competition law). This appeal for a different institution is made due to our belief that the adjudication of cases in the digital space requires specialized knowledge in order to balance the interests of the various parties, considering the complexity and scope of online business. The institution may have jurisdiction in any digital dispute, not necessarily restricted to anti-competitive actions. Arguably the most important mandate of this institution would be to bring to the fore all parties that have been affected by the action of the central, multi-sided platform in order to determine whether the act or omission in question is unreasonable, thereby implying that this would be a time-consuming process, but would be critical to ensuring just and fair competition in the digital realm.

The Data Advantage

What are some of the concerns that this institution would have to deal with? For starters, data dominance. Large companies in the digital space today create superior services and applications based on the consumer data they collect. The inherent nature of this dominance makes it difficult to challenge, as established companies will always have the considerable advantage of knowing consumer preferences (absolute gold dust in business) better. The gravity of the situation becomes clearer upon examination of the following graph:

techs-power-into-states-hands-critics-say.html (last visited 4 Mar., 2023).



The curated search results that Google (and subsidiaries like Maps and YouTube) can provide are peerless and are a direct consequence of the first movers' advantage that Google had during the early 2000's. It is difficult to determine whether this dominance by itself is anti-competitive, but its adverse consequences on smaller start-ups in the same sector is unquestionable.[17] It would most certainly be deplorable to enforce data sharing between larger companies and smaller start-ups and yet the new competition law in question would need to devise ways in which certain benefits accrued due to informational dominance can be limited. A plausible way would be to use data processing in public interest, by obligating companies to share certain categories of data with government institutions. This would 'publicize' particular sectors and would essentially entail transfer of business opportunities to the government (who are ideally mandated to use this data for social benefit). It may not necessarily benefit start-ups in the short run, but serves to prevent massive upscaling in certain sectors by companies who have the inherent data advantage.

The Algorithm Conundrum

Another issue that the specialized body would likely have to deal with frequently is cases pertaining to algorithmic complexity. There have been questions of antitrust raised in matters of dependence of rivals on larger, facilitating platforms. Due to the lack of precise understanding about the programs which run these platforms, it is unclear whether the companies

[17] OECD, Abuse *of dominance in digital markets*, (2020), *available at*- https://www.oecd.org/daf/competition/abuse-of-dominance-in-digital-markets-2020.pdf (last visited 7 Apr., 2023).

which have created them have made them entirely unbiased and whether their word can be taken for it. These large multi-sided platforms (Google, Amazon etc.) act as ports of contact between their smaller rivals and their consumers. Naturally, there can be attempts to stifle them, either through programming bias against them into the algorithm or charging differential prices for service provision or aggressively advertising their own products on the very same platform which their rivals are dependent on. In order to keep competition intact, the exact procedure followed by an algorithm in data-processing must be made known to our aforementioned specialized authority which must also have the capacity to test it from time to time. This recommendation arguably impinges on aspects of intellectual property, however in the grander scheme of competition, considering the potential that algorithmic exclusion can have, this harsh measure is well-worth taking.

IV

TECHNODEPENDENCIA

Integration with the Digital

Several decades ago, with the nuclear shadow cast over the world, a question was raised by Einstein in regard to our technology being our own reckoning.[18] Today, much like his scientific theories, his prophecy may be coming true in a subtler, more dangerous way. 'Super apps' such as Facebook, Amazon and Google have sought diversification into different sectors, and are most often at the forefront of innovation. Investments have been made by them in disruptive technologies such as biotechnology,[19] Artificial Intelligence,[20] blockchain finance, internet-of-things[21] etc. In the context of the digital space being dynamic, it is important to consider its progressive nature and the potential it has to exponentially increase the influence that Big Tech may have on our lives. The increase in digitalization, with more sophisticated algorithms will increase the dependency that we have in technology, taking away human autonomy even in activities such as collection and interpretation of biometric data,

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[18] Einstein, *Atomic Education Urged by Einstein*, NEW YORK TIMES, (25 May, 1946).

[19] CB Insights, *Where Big Tech is Placing Bets on Healthcare* (Sep., 2018) *available at-* https://www.cbinsights.com/research/top-tech-companies-healthcare-investments-acquisitions/ (last visited 10 Apr., 2023).

[20] Frank Konkel, *Study shines a light on Big Tech's AI Investments*, CSET (Apr., 2021) *available at-* https://cset.georgetown.edu/article/study-shines-a-light-on-big-techs-ai-investments/ (last visited 10 Apr., 2023).

[21] Dom Nicastro, *Why Google Invested $3.2 Billion in the Internet of Things*, CMSWIRE (Jan., 2014) *available at-* https://www.cmswire.com/cms/internet-of-things/why-google-invested-32-billion-in-the-internet-of-things-023762.php (last visited 6 Apr. 2023).

driving and fighting wars.[22] It is pertinent to note here, how the data dominance and leverage in one field translates to instant growth and expansion in other sectors. This, in particular, is the major aspect of the digital space that current competition law is not equipped to handle. From the point of view of smaller companies, the existing dominance of expansionary organizations is unfair, as their prior access to consumer data as well as purchase of start-ups in the same sector cannot possibly be matched. Whether or not this is fair and can be considered analogous to natural monopolies is up to debate. Consider still, the greater price that consumers have to pay when multiple important services they avail of is provided by just one or a few companies. Without competition, and greater digitalization, consumer data remains in the hands of entities that cannot be easily held accountable (under current laws, that is).

As alluded to in part II, it is this inherent nature of the digital space that keeps ahead the companies that invest big and invest early. In order to ensure that in future this dystopian is never a reality, certain restrictions have to be imposed on companies and their operations and positive steps have to be taken towards data sharing, transparency and privacy. A new competition law (in conjunction with the aforementioned specialized institution) would need to add new tools and provisions for anti-competitive analysis, in addition to conventional ones that do exist. Some of these tools may include consumer data harvested (with or without consent), increase of tailored advertisements in acquired platforms, analysis of presence or absence of consumer consent clauses, platform comparisons with special scrutiny on the underlying algorithm etc.

As such, with increased digitalization, there may emerge unique ways for monopolization. An example of this can be seen with Google manipulating search results to promote its own services or applications. It is not alone, as several other platforms of note have done the same. Before the dot com boom, an anti-competitive action such as this would not have been conceivable. It highlights the need to treat such cases differently and create new jurisprudence that can be added on to legislations.

Privacy for Businesses

Data privacy, seen in the context of competition, is another Pandora's box of antitrust that will be opened with increased digitalization. Mega platforms such as Google, Facebook and Amazon are central to the operations of rivals in regard to their connect with consumers. Data about their search patterns and transactions can be exploited for commercial benefit of these platforms as well as putting them in a superior position if dealings, mergers or acquisitions have

[22] Yuval Noah Harari, HOMO DEUS (2017).

to be made. Data protection laws, those in India, currently have wide applicability and impose considerable obligations on the data fiduciary.[23] However, their focus is narrow and must be expanded to include data of entities such as partnerships and companies. In addition to this, categorization of data can be considered wherein companies must be allowed to specifically bar parent platforms from harvesting business data, the contravention of which would lead to heavy penalties.

V

CONCLUSION

In conclusion, it is our belief that competition law for the digital realm would be most effective if it does not remain rigid, given the dynamic nature of contemporary services and how they leverage fast-moving consumer preferences. In the not-so-distant future, data is likely to be the most important, universal currency owing to the potential its exploitation holds to monopolize at a large scale.

The physical and digital divide is the root cause of the complex maze that is competition law in the digital space. Anti-competitive actions in the future must be dealt with great scrutiny as monopolization is a factor contributing to and is an outcome of the grander scheme of the disastrous implications of unregulated private sector behemoths, who will have unprecedented control over day-to-day human behaviour. Dealing with these challenges, will require combined efforts of governments, regulators and public awareness. A competitive future benefits the common man greatly, and can most fairly be achieved when the digital divide is ably dealt with by the law, paving the way for the Goliath-slayers of tomorrow.

[23] Personal Data Protection Bill (2019).