



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2021 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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An Analysis of Legal Framework Related to Anti-Competitive Behaviour in Digital Markets

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Received 01 August 2021; *Accepted* 28 August 2021; *Published* 31 August 2021

Rapid technical advancements, particularly in the information technology industry, have resulted in a significant change in the industrial structure. Globally, regulatory authorities are attempting to adjust to these changing conditions. There is much discussion on the need of regulating technology-driven industries such as e-commerce and telecoms. Certain corporate titans' activities contradict the neoclassical economic theory, which says that every business's goal should be profit maximisation. Businesses are putting growth ahead of profit. India has started a series of investigations against business behemoths. Several of them were successful in determining breaches of the 2002 Competition Act. Numerous investigations, however, have been discontinued due to a lack of legal recognition for collective control or the difficulties of establishing supremacy in the traditional economic sense. The Competition Commission of India's (CCI) current jurisprudence demonstrates that there are constraints in resolving competition issues in technology-driven industries, owing to the existing legal framework, which does not recognise the need to assess an appreciable adverse effect on competition in the absence of apparent dominance. While the Act considers efforts to cartelize to be a violation, it does not consider monopolisation to be a violation. The CCI's history and current jurisprudence indicate that the CCI's perspective is evolving significantly as well. This article discusses the Sherman Act's concept of "attempt to monopolise" and its applicability in the Indian context. The essay reviews recent antitrust scholarship in the United States and analyses the critical components that establish antitrust violations under the effort to monopolise clause. While the majority view places a premium on showing a high probability of success when evaluating a monopolisation attempt, the minority view argues that attempt relates to behaviour rather than a state of being. Illegal intent may be inferred from behaviour as evidence of effort. The law requires

behaviour, not the commission of a crime. As a consequence, monopolistic behaviour is a kind of behaviour. The CCI, this paper argues, will gain from applying the Sherman Act's attempt to monopolise concept to antitrust problems in technology-driven industries like e-commerce, telecommunications, and transportation.

Keywords: *market, digital market, competition, monopolization.*

INTRODUCTION

The corporate environment is changing dramatically as a result of recent technological advances. For companies, digital transformation has become critical. The way companies function has altered as a result of digitization. Digital platforms are a big part of these shifts, and they've wreaked havoc in a lot of industries. Google, Amazon, Facebook, and Apple all provide a range of services, including a search engine, a marketplace, social networking, and app stores. The "fourth industrial revolution is gaining traction as a result of the platform economy. It has benefited customers by bringing new goods and services to their homes at no additional expense. Platformisation has also altered the capacity of businesses to expand quickly, altering the sector's structure. "Digital platforms are causing the next wave of disruption, growth, and breakthrough innovation due to rapid advancements in cloud, mobile, and analytics, as well as the decreasing cost of these new technologies." Customers and partners, including developers, are brought together via digital platforms. They allow unprecedented degrees of cooperation between businesses from various industrial sectors, which may lead to the creation of completely new goods and services, and they generate marketplaces of tremendous size and efficiency. Although digitization has benefited both consumers and producers, it has also raised several competitive issues. Concerns about competition in digital platform marketplaces are mostly linked to consumer behaviours such as steep discounts, data control, mergers and acquisitions, and so on. Competition rules that only focus on consumer welfare are insufficient to address the challenges presented by digital marketplaces. The current article examines the

application of the United States' Sherman Act 1890's effort to monopolise clauses in the Indian environment, particularly for digital marketplaces.¹

The market should be deregulated, and the participants should be allowed to compete in order to obtain the greatest possible outcome for all parties involved. Healthy competition between the participants ensures that new innovations are introduced into the sector and that product/service/data costs are reduced. However, there are times when the market's behaviour interferes with the development of healthy competition. So that such actions might be checked, the Competition Act, 2002 was established with the goal of ensuring that markets remain contestable and function in the best interests of consumers. The Monopolies and Restrictive Trade Practices (MRTP) Act, which was passed in 1969, may be traced back to the beginnings of competition regulation. After a few decades, the necessity for new laws became apparent as a result of liberalisation, and the Competition Law of 2002 was adopted as a result. The Competition Commission of India (CCI) was formed by the Central Government on the 14th of October, 2003, in order to accomplish the objectives of the Competition Act of 2002.

ANTI-COMPETITIVE BEHAVIOUR OF COMPANIES IN THE DIGITAL ECONOMY

Data is the workhorse of the digital economy, as well as the money that allows consumers to access free internet services and applications. We get customised incentives, discounts, and advertising from the digital marketplaces as a result of the data we give. Since network effects favour big corporations in terms of data access, small companies and startups are denied the same privileges as larger corporations. As a result, it served as a de facto barrier to the development of the digital market.

Data privacy is one of the problems we must confront as a result of the increasing importance of the digital economy. Cambridge Analytica was found to have engaged in the unlawful acquisition of Facebook data. The data of about 87 million Facebook users was compromised. This information has the potential to be misappropriated. As a result of the Cambridge Analytica

¹ Will Kenton, 'Sherman Antitrust Act' (*Investopedia* 20 October 2020)
<<https://www.investopedia.com/terms/s/sherman-antitrust-act.asp>> accessed 20 July 2021

and Facebook scandals, the issue of data privacy has received a lot of attention. Network effects have the ability to lead to the establishment of dominance. The establishment of dominance makes the entrance of new companies difficult, as was the case with Google's online web search services, as was the case in the past. The search engine service must be able to 'crawl' and index the data, and Google had a head start in this area because of its acquisition of Overture. The expense of crawling the whole internet in order to create a search engine upon which an algorithm may be built and refined is a barrier for new entrants since it is too expensive.

Deep discounting and predatory pricing are just a few of the issues the CCI is dealing with right now, particularly with the arrival of big firms like Flipkart and Amazon on the scene. Despite the fact that there is no applicable provision in the Act of 2002 to check on such problems, they have classified predatory pricing as an abuse of power and have classified it as such. The CCI, on the other hand, would not intervene in the case if there is no evidence of abuse of power. Therefore, the CCI should develop an appropriate regulatory framework to protect the public interest.

DIMENSIONS OF DIGITAL PLATFORM

"A digital platform is a technology-enabled business model that generates value by allowing two or more interdependent organisations to share information. Platforms often bring end-users and producers together to transact with one another. They also allow businesses to exchange information to improve cooperation and the development of new goods and services."² The ecology of the platform links two or more sides, resulting in strong network effects that enhance the value as more members join. Algorithms developed to gather and analyse data are used in digital platforms. These platforms have a high initial sunk cost but a low marginal cost. The equipment needed to store and analyse data is expensive but once operational, the marginal cost continues to fall, suggesting large-scale savings. Data may aid in the improvement of algorithms, allowing customers to get better and more personalised services. High economies of scale and scope characterise digital platforms. When it is more cost-effective to manufacture two or more

² Alex Moazed, 'Platform Business Model' (*Applico*) <<https://www.applico.com/blog/what-is-a-platform-business-model/>> accessed 22 July 2021

goods or services inside a single company than it is to produce them separately, scope economies occur. The existence of shareable inputs in the production process, i.e. inputs that may be utilised to create a variety of outputs, results in scope economies. For example Platforms for production, human capital, knowledge, and data. As a result, economies of scale may help to concentrate the market for big data in the hands of a few companies. The two unique characteristics of digital platforms, namely network effects and data are what give them their strength. When more consumers attract additional merchants and partners, the network effect occurs and vice versa. The responsibility of generating markets is therefore shifted from the company to the network. As the network's dynamic momentum grows, the platform owner serves as a facilitator, distributing the load among a rising number of members. Data that is open and shareable may be utilised to generate new types of value. Data is a critical component of digital platforms' economic models, and having control over it provides them with a competitive advantage. Furthermore, platforms with a big user base can gather more data to enhance the quality of their services, allowing them to attract more new users. Such platforms may enhance their targeted advertising and monetize their services. As a result, a big user base gives an incumbent market participant an advantage over newcomers. When a new start-up enters the market, it confronts stiff competition from technological behemoths like Apple, Google, and others. Those who can't keep up with the competition ultimately fade away. Start-ups with promise, on the other hand, are purchased by dominating platforms. "Google, for example, has bought 212 businesses since its founding in 1998, with a total worth of about US\$ 17 billion (TWN, 2019). Digital marketplaces have conglomerate-like features, such as a high degree of diversification across weakly linked or even unrelated areas. Amazon, for example, began as a bookseller and has now grown to offer virtually anything online, including payment systems, cloud computing, and the creation and distribution of movies and television shows. Google has expanded beyond search to include maps, operating systems, mobile and personal computing devices, and cloud services. Instagram, Facebook has branched out into picture and video social networking, messaging with WhatsApp, and virtual reality with Oculus VR." Because of supply-side and demand-side synergy, digital platforms want to diversify. Consumer data, for example, is utilised or generated by digital companies and may be used for some goods. The operation of several

product lines allows these businesses to better manage their resources. Synergies may also be found on the demand side. Consumers often prefer to buy several items from the same vendor since it saves them time and money.³

Although conglomerates expand into apparently unrelated markets, according to market power theory, this may indirectly enhance their market power since a high degree of diversification promotes multi-market connections, enabling (tacit) cooperation among conglomerate companies. Conglomerates may also utilise cross-subsidies across various lines of business, such as predatory pricing, to enhance their market dominance in a particular market. The “deep pocket” hypothesis is another name for this. Resource theory is another theory that seems to be more applicable to digital marketplaces. According to this idea, digital actors have valuable resources such as data or technical knowledge that may be in surplus capacity at any one time, incentivizing companies to grow. For example, Amazon built a massive data centre to accommodate the growth of e-commerce. However, owing to surplus capacity, Amazon eventually chose to join the cloud services industry via AWS (Amazon Web Services).

Bundling, access to data, gatekeeper position, and acquisition of start-ups are four kinds of competition issues that may emerge with digital conglomerates. Bundling tactics are facilitated by supply- and demand-side synergies, which may have both efficiency and anti-competitive consequences, especially when the incumbent sets entry obstacles for new competitors. Second, companies that control critical components like data may have a competitive advantage over prospective competitors when it comes to expanding into new product markets. Third, companies that grow into multi-product conglomerate organisations may find themselves in a situation where they are gatekeepers for third-party access to their customers, such as advertising and sellers, giving them significant market power. Finally, dominant companies may acquire attractive start-ups to grow into new markets. Large companies may offer complementary expertise and resources to create these new technologies, making these purchases efficient. They may however be motivated by pre-emptive motivations, posing a

³ ‘50 US Attorneys general have launched an antitrust investigation of Google’ (*MIT Technology Review* 9 September 2019) <<https://www.technologyreview.com/2019/09/09/238574/50-us-states-have-launched-an-antitrust-investigation-of-google/>> accessed 24 July 2021

threat to competition and innovation, especially if these start-up initiatives are shuttered after purchase.

CHALLENGES FACED BY ANTITRUST BODIES

The nature of markets and business structures has altered as a result of rapid technological advancement. Competition authorities across the globe have been faced with new difficulties as a result of this. The 'consumer welfare method,' which is focused on assessing advantages or damage to consumers in the form of lower costs or greater value, is now the most popular antitrust strategy. The consumer welfare approach is unconcerned with tactics that utilise predatory pricing to expand and monopolise the market. In the short to medium term, this strategy leads to reduced costs for customers until rivals are pushed out of the market. As a result, one might claim that the consumer welfare strategy fails to properly address anti-competitive corporate activities on digital platforms.

It is necessary to adopt a new strategy to competition inquiry. Some academics have recommended that competition authorities concentrate on the anti-competitive implications of platforms' ownership of personal data, while others have suggested competition policy changes and emphasises the need of using a process-based approach that focuses on entrance barriers, conflicts of interest, the development of gatekeepers and bottlenecks, data usage and control, and bargaining power dynamics. When it comes to digital marketplaces, it is generally suggested that competition policy be changed. Market power analysis, damage theories, and operating modes all need to be improved. Given the significance of innovation in digital marketplaces, dynamic efficiency should be prioritised above static efficiency. Market power should be evaluated more dynamically, with a greater emphasis on prospective competitors and entry obstacles. It is also advised to err on the side of disallowing potentially anticompetitive conducts and to place the burden of evidence on the incumbent to demonstrate that its behaviour has a pro-competitive impact. In response to the difficulties presented by the digital economy, competition authorities across the globe are changing their rules. "In 2017, Germany revised its competition law to adapt its legal framework and tools to new features of the digital economy, including a provision that recognises free products or services provided by platforms

as a market, stating that the assumption of a market shall not be invalidated by the fact that a good or service is provided free of charge. (Section 18(2a) of UNCTAD, 2019).”

Monopolization Attempt under the Sherman Act “Every person who shall monopolise, or attempt to monopolise, or combine or conspire with any other person or persons, to monopolise any part of trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars is a corporation, or an In the US antitrust literature, the term effort to monopolise has been extensively debated, with a focus on what constitutes an attempt to monopolise.” Given the intricacy of the issues involved, the US Supreme Court had difficulties dealing with this matter substantively. “the phrase ‘attempt to monopolise’ means the employment of means and procedures which, if successful, would accomplish monopolisation, and which, though falling short, approach so close as to create a dangerous probability of it.,” the US Supreme Court stated in *American Tobacco Co. v. United States*.⁴ The Supreme Court said in *Walker Process Equipment Inc. v. Food Machine & Chemical Corp*⁵ that evaluating the defendant's capacity to reduce or eliminate competition in the relevant market is required for determining monopolisation and attempted monopolisation.

The case of *Union Leader Corp. v. Newspaper of New England Inc*⁶ is an excellent illustration of a monopolistic intent. Haverhill, a tiny Massachusetts town that had been serviced by a single newspaper for almost a century, was the subject of the case. When the printers of the Haverhill Gazette were on strike, a publisher from a neighbouring town, the Union Leader, produced a shoppers' guide for Haverhill. Later, Union Leader started publishing and distributing its paper regularly in Haverhill. The Union Leader launched a lawsuit against the Gazette, claiming that it engaged in unethical business practices to preserve its monopolistic position in Haverhill. The District Court of Massachusetts observed in this case that Haverhill was a “one newspaper city” with a market that couldn't sustain two high-quality daily newspapers. The Court also

⁴ *American Tobacco Co. v United States* 328 U.S. 781 (1946)

⁵ *Walker Process Equipment Inc. v Food Machine & Chemical Corp* 382 U.S. 172 (1965)

⁶ *Union Leader Corp. v Newspaper of New England Inc* 218 F. Supp. 490 (1963)

acknowledged that capturing a market by ability, forethought, and industry would not constitute a violation of the Sherman Act. However, proof of the employment of illegitimate methods to acquire dominance in the natural monopoly market may be used to show exclusionary behaviour. Gazette covertly reduced advertising prices to compete with Union Leader's pricing, while Union Leader made hidden payments to Haverhill businesses and charged discriminatory advertising rates. The court found that the Gazette's and Union Leader's activities were "not honestly industrial" and constituted an effort to monopolise. The Gazette's actions according to the appeal court were done in self-defence and with no unlawful purpose. In *Paschall v. Kansas City Star Co.*⁷, the courts used economic research to help them make antitrust decisions. Star had a monopoly on the wholesale newspaper business in Kansas City, Missouri in this case. The newspaper was delivered by independent carriers. When Star chose to terminate its independent delivery service, independent newspaper carriers sued, claiming unwillingness to bargain and an effort to monopolise the carrier business. The Eighth Circuit Court used the Chicago School of Economics' optimal monopoly pricing theory to this issue, concluding that Star's choice to vertically integrate would reduce prices and enhance the quality of services to customers. In natural monopoly situations, this example shows that analysing predicted outcomes rather than the methods by which they are achieved may be helpful. As a result of the high economies of scale in natural monopoly industries, monopolisation attempts are often employed. In such instances, the purpose to monopolise, which may be deduced from the companies' conduct, as well as the consequences of such monopolisation, should be considered.

The majority of cases filed before US circuit courts followed the conventional method established in 1905 by Justice Oliver Wendell Holmes of the Supreme Court in *Swift & Co. v. the United States*⁸ in the first attempt crime case. The three key elements to bring down an action under the US antitrust regime under an attempt to monopolise are (i) specific intent to monopolise, (ii) conduct designed to implement that intent, and (iii) a dangerous probability of

⁷ *Paschall v Kansas City Star Co.* 605 F.2d 403 (8th Cir. 1979)

⁸ *Swift & Co. v the United States* 196 US. 375 (1905)

success, according to the jurisprudence outlined in *Swift & Co. v. the United States*.⁹ To monopolise a lawsuit, the plaintiff establishes a high likelihood of success by demonstrating that the defendant has a sufficiently large proportion of the relevant geographic and product markets.

ATTEMPT TO MONOPOLISE AND EMERGING MARKETS: INDIAN PERSPECTIVE

Emerging markets, like telecommunications and e-commerce, provide competition authorities with unique problems throughout the world. Market power is not assumed to be necessarily negative under competition law. It may be the outcome of efficiencies as well as the source of the same. Market power is seen to be detrimental only if it leads to higher prices or lower production. This focuses only on the impact and ignores the methods used by the business to acquire market dominance. This makes it much more difficult to put a stop to future abuses of power. Furthermore, antitrust damage cannot be evaluated simply based on price; other criteria such as product quality, availability of choice, decreased service, or effect on innovation must all be considered. The recent jurisprudence of the CCI may be considered in this respect. In the case of *Bharti Airtel Limited v. Reliance Industries Limited & others*¹⁰, it was claimed that the defendants, who owned the most 4G LTE spectrum, had recently entered the market and were offering promotional offers to subscribers that included free data, voice, video, and a full suite of applications and content. The defendants' aggressive pricing practises resulted in the expulsion of existing rivals from the market. The CCI, on the other hand, considered it difficult to determine the defendant's dominating position since the opposing parties' market share in the relevant market was low due to the defendant's status as a new entrant. The CCI held that an entrant's short-term business plan to enter the market and establish its brand could not be deemed anti-competitive. Because there was no apparent supremacy in terms of market share, the CCI chose to ignore the defendants' predatory pricing approach for capturing the market, which resulted in the expulsion of minor market participants from the telecom sector. In *All India Online Vendors Association v. Flipkart India Private Limited and Flipkart Internet Private*

⁹ *Ibid*

¹⁰ *Bharti Airtel Limited v Reliance Industries Limited & Ors* Case No. 03 of 2017

*Limited*¹¹, it was alleged that Flipkart was abusing its dominant position by giving preferential treatment to certain entities and that the Opposite Parties (OPs) were engaging in unfair trade practises, for which the corporate veil was required to be lifted to assess economic nexus and writ was issued. Flipkart was also accused of having a clear conflict of interest with other manufacturers that sold on their marketplace as well as their brands. In the current market structure of India's online platforms industry, the CCI found that no one company has a dominating position. The CCI also noted that in India, the marketplace-based e-commerce model is still a young and developing form of retail distribution. This company model's technology-driven character was recognised by the CCI. Recognizing the potential for development as well as the efficiency and consumer advantages that such markets may offer, the CCI believed that any intervention in such markets should be carefully designed to avoid stifling innovation.

It was claimed that ANI, a major participant in the industry, was abusing its dominating position in *M/s Mega Cabs Pvt. Ltd. v. M/s ANI Technologies Pvt. Ltd.*¹² It was claimed that ANI engaged in anticompetitive agreements with cab drivers on its network, resulting in a reduction in market competition. ANI was able to collect significant funds to gain market domination in the Delhi-NCR area, and it used deceptive methods such as predatory pricing, giving customers periodic discounts, and incentivizing drivers with the express purpose of eliminating competitors from the market. The CCI concluded that current players' or new entrants' failure to replicate any player's unique technology or software, or the model established for functioning in a specific sector, cannot be considered to be imposing entry barriers in and of itself, and therefore ended the case.

In contrast to its previous positions, the CCI has adopted a cautious stance in subsequent cases involving technology-driven market participants. In *Umar Javeed and others v. Google LLC and others*¹³, It was claimed that a variety of Google applications, including Google Maps, Gmail,

¹¹ *All India Online Vendors Association v Flipkart India Private Limited and Flipkart Internet Private Limited* Case No. 20 of 2018

¹² *M/S Mega Cabs Pvt. Ltd. v M/s ANI Technologies Pvt. Ltd.* 218 F. Supp. 490 (D. Mass. 1963)

¹³ *Umar Javeed and others v Google LLC and Ors* Case No. 39 of 2018

and YouTube, were exclusively accessible via GMS and could not be downloaded independently by device makers. Manufacturers have to sign agreements with Google to get permission to put these apps and services on their Android devices. End-users, according to the Informants, could not get such services directly. The Informants further claimed that Google participated in a variety of anti-competitive activities to enhance its dominating position in online general web search services and online video hosting platforms, either in the market in which they are dominant or in distinct markets (through YouTube). The obligatory pre-installation of the complete GMS suite under MADA (Mobile Application Distribution Agreement) constituted an unfair condition imposed on device makers, according to the CCI. The CCI also had the impression that Google used its Play Store dominance to enhance and maintain its position in other important areas, such as online general search, in violation of the Act. The CCI ordered an inquiry into the issue as a result of the above.

It was alleged in *M/s Fast Track Call Cab Private Limited v. M/s ANI Technologies Pvt. Ltd.*¹⁴ and *Meru Travel Solutions Pvt. Ltd. v. ANI Technologies Pvt. Ltd.*¹⁵ that ANI was using unfair trade practises like unfair conditions, predatory pricing, and so on to establish its monopoly and eliminate otherwise equally efficient competitors who could not engage in such predatory pricing in the radio industry. It was also claimed that ANI unreasonably incentivised the drivers by utilising funds made available to it as a result of foreign investments that could not be matched by current radio taxi operators or prospective indigenous businesses looking to establish similar operations in India. Existing participants were excluded, while new entrants faced entrance hurdles as a consequence of such actions. ANI was spending more money on discounts and incentives on consumers and drivers than it was generating, according to the CCI (aside from any variable expenses it may be experiencing). The CCI concluded that the prices suggested predatory pricing intended to drive other competitors out of the relevant market and ordered a thorough investigation. The CCI, on the other hand, did not deem ANI to be dominant in the relevant market, and therefore no case of violation of the Act could be brought against the OP. Meru Travel Solutions Private Limited later filed multiple information(s) against M/s ANI

¹⁴ *M/S Fast Track Call Cab Private Limited v M/s ANI Technologies Pvt. Ltd.* Case No. 06 of 2015

¹⁵ *Meru Travel Solutions Pvt. Ltd. v ANI Technologies Pvt. Ltd.* Case No. 07 of 2015

Technologies Pvt. Ltd., Uber India Systems Pvt. Ltd., and its parent entities, alleging that Ola and Uber were individually and jointly dominant in the relevant market in Hyderabad, Mumbai, Kolkata, and Chennai (due to common institutional ownership). The CCI closed these claims because there was no evidence of reducing competition.

The Informant claimed in *Delhi Vyapar Mahasangh v. Flipkart Internet Private Limited and its associated entities*¹⁶ that these marketplaces are distorting the fair playing field by offering significant discounts to their favoured merchants at the expense of non-preferred suppliers. It was also claimed that Amazon and Flipkart have exclusive deals with smartphone makers and that their private brands were given preferential treatment in sales by a select preferred vendor. In this instance, the CCI recognised that online intermediation services are important facilitators of entrepreneurship since they provide sellers/business users access to new markets and broaden the range of products and services available to consumers. These services are crucial to the economic success of sellers who use them to connect with customers on the platform. At the same time, internet platforms that provide intermediation services cause companies to become more reliant on them. The CCI concluded, on the surface, that an exclusive launch, combined with preferential treatment for a few vendors and pricing tactics, creates an environment that may have a significant negative impact on competition, and ordered an inquiry into the issue.

In such cases, competition authorities must use caution while applying the effort to monopolise notion, and it is critical to examine the firm's purpose. There is no need to be concerned if the company is pursuing a growth-over-profit strategy to join the market or create its new market with no aim of eliminating competitors. However, if the purpose or effect of such a strategy is to drive rivals out of the market, competition authorities must take notice of the violation.

CONCLUSION

The CCI's jurisdictional practice has been changing over time as may be observed. Previously, the CCI would close cases if there was no clear evidence of the firm's market dominance, such as a lack of market share. Furthermore, consumer welfare was taken into account, since

¹⁶ *Delhi Vyapar Mahasangh v Flipkart Internet Private Limited and its Associated Entities* Case No. 40 of 2019

predatory pricing tactics were advantageous to customers. However, in recent instances, the CCI has taken notice of businesses using business methods such as offering significant discounts to consumers and giving free services to remove rivals. Their market dominance and predatory pricing aren't reflected in their market shares. Furthermore, the CCI's powers are limited by the absence of legislative measures that recognise an effort to monopolise or collectively dominate businesses. As a result, This research believes that adopting such elements from the Sherman Act, without putting too much emphasis on the risk of failure, may aid in the prevention of anti-competitive behaviours in technology-driven sectors as well as promote innovation and consumer welfare. The firm's intention may be deduced from its actions. As shown in US antitrust trials in areas where natural monopolies exist, the firm's behaviour in attaining monopoly, i.e. whether it was acquired organically or via the use of illegal methods should be considered.