

E-commerce industry: The sad reality

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Abstract

Competition Law being the new addition to the legal scenario, the E-Commerce industry faces the competition challenges in its development period. The collusion and market cartelization are becoming a daily practice. The paper focuses on these challenges and the law to protect these type of practices. With the growing importance of the E-commerce industry, collusion and wrongful trade practices in the industry causes the whole world to suffer as the control is shifting from the offline mode to the online mode. The role of the Information technology Act, 2000 and the international law perspective of this is to be observed too also the competition commission will play an important role in governing the market condition and bring stabilization in the same.

Keywords: E-commerce, collusion, information technology, competition commission, economy, international law

Introduction

The terms E-Commerce and online shopping are mostly used interchangeably, but the same is not the case, it is just a small part of e-commerce industry. E-commerce includes business to business transactions and also refers to online stock, bond transactions, buying and downloading software without actually going to the physical store. E-commerce is nothing but conducting business through a network technology. The internet and World Wide Web are the basic necessities to operate in the E-commerce industry today.

Many developing countries seek to establish a coherent regulatory framework to develop and support e-commerce across national and international borders. The development of such framework requires a fundamental review of existing traditional legal approaches. Many of these include documents, signatures, cash, face-to-face meetings and many more such as the legal provisions. And to encourage more and more of these electronic transactions it is important to demonstrate and identify measures that reflect legal rights and obligations. The Information Technology Act, 2000 provides the legal basis for the transactions to be of legal effect, validity or enforceability, these being in electronic form.

The e-commerce market in India is witnessing an unprecedented growth spurt. One of the most promising sectors of the Indian market, the annual revenue of the e-commerce sector is projected to cross USD 16 billion by the end of 2015.¹ With an increased involvement in the E-commerce industry, there is a rapid rise in collusive practices and which has further led to a greater responsibility on the Competition Commission of India and its operations of moderating these effect

Research Questions

1. What are the effects of e-commerce on the economy in the present paradigm?
2. What law governs the e-commerce industry?
3. Internationally, what is the scenario of e-commerce and what are the aspects which is governing it thereof?
4. What is the relevance of Informational Technology Act, 2008?
5. What are the collusive trade practices entered into in the e-commerce industry?
6. What is the role of Competition Commission of India in this matter?

Research Methodology

The present study is essentially in the form of doctrinal study. In this type of research, different sources are found and information is collected. Then from the collected information research is carried out and conclusion is drawn from the Researchers findings and analysis.

Hypothesis

This research is aimed at exploring a different aspect related to e-commerce industry, it being a latent one, which in reality, is misusing the advantage it possesses over the traditional industry and also what can be done to mitigate this misuse is also being looked into.

1. What are the effects of e-commerce on the economy in the present paradigm?

E-commerce simply, is the commercial transaction of services in electronic format. It is also referred to as "any transaction conducted over internet or through its access,

¹ Fast and Furious: The beginning of multi-year explosive growth, Thematic, November 2014, accessible at <http://www.motilaloswal.com/site/reports/HTML/635513814725455509/index.htm> (last accessed on 11th May, 2015)

comprising the sale, lease, license, offer or delivery of property, goods, services or information, whether or not for consideration, and includes the provision for internet access.

Effects of E-commerce

The electronic commerce industry leads to gaining better financial growth and development as with the help of e-commerce the gaining force for the industry many of the retailers who could not reach the global market for various sales and purchases are able to reach a larger population even before they have entered into the market. The e-commerce industry by allowing an easy access of a large crowd to various worldwide industries which was not earlier possible has increased the overall financial growth and development scenario.

The retailers of various products are able to reach the remote areas of the country with the help of e-commerce sites, which has made it easy for the rural population to access various goods and services for their betterment. Nowadays e-commerce giants have reached to small towns as well as villages.

With the development of e-commerce industry there has been growth in the level of employment as with the increasing network of e-commerce leads to generation of many new job profiles and positions. The development of e-commerce industry has the capacity to intake and generates employment within a country to have proper and smooth functioning.

The e-commerce industry has led various new startups to gain a lot of importance in the market. With the help of e-commerce industry the exports have also increased as the medium of export is an online platform to which people at large have an access. The e-commerce industry has allowed easy growth opportunities to the country, as they have reached population abroad and as the result have increased the country's overall exports.

The development of e-commerce industry has revolutionized the retail scenario of the country as the customers are offered a large number of products at same time easily on a click of the finger and that too with great discounts.

It has become easy to set up the business as the world has an access to the same through internet which has seamlessly increased the entrepreneurship. With the help of e-commerce various industrial giants are coming into force in the country. Where Amazon already gained a vast customer base in the country, now as with the Flipkart - Walmart deal Walmart probably the world's largest company by revenue has entered the Indian Market.

Evolution of e-commerce industry in India is reshaping the Indian economy in various ways. The government is also encouraging the startups and e-commerce environment so as to witness the change driven by online selling.

2. What law governs the e-commerce industry?

The Government of India enacted the Information Technology Act in June 2000 to comply with the requirements of a law that recognizes the legal recognition of transactions through electronic communications. As a result of the discovery of a legal flaw based on judicial review, the 2008 IT Act was amended introduced various provisions regarding the validity of electronic contracts, the security of electronic signatures and fines for violations. Computers, identity theft, breach of confidentiality and

actions regarding the sending of pornographic publications in electronic format. Information Technology (Amendment) Bill 2006 was amended by Information Technology Act Amendment Bill 2008 and in the process, the underlying Act was renamed as Information Technology (Amendment) Act 2008 herein after referred to as ITAA 2008. As the role of the IT sector, especially Indian Internet service providers and payment brokers, has grown, the government has defined the roles and responsibilities of "promoters" in accordance with the 2011 IT guidelines (intermediaries) (IT brokers guidelines). Confidentiality of Safe Harbor rules in accordance with IT law to protect service providers from third-party data.

There are various statutes that may govern the establishment of digital business in India depending upon the nature, purpose and manner of conducting the digital business, such as:

- a. The IT Act; 2000
- b. The Indian Contract Act, 1872
- c. The Payment and Settlement Systems Act 2007 (PSS Act);
- d. The Foreign Exchange Management Act 1999;
- e. The Companies Act 2013; and
- f. The Trademarks Act 1999.

The procedure and manner of establishing the digital business will vary from case to case depending on various factors including the nature of business, residential status of the shareholders, nature of payment system implemented, etc.

IT laws are the main laws governing and regulating the use of the Internet in India. IT legislation governs Internet behavior and aspects related to electronic commerce, contracts, cyber surveillance, cybercrime and online liability. Some laws, such as the Payment and Settlement Systems Act 2007, also regulate payment system operators and payment intermediaries in the field of electronic commerce. The Indian Central Bank (RBI) sometimes regulates the use of payment methods (such as gift cards, e-wallets, credit cards and debit cards) to facilitate electronic and cellular transactions. In March 2016, the Government of India Ministry of Commerce, Industry, and Energy issued a guide to foreign direct investment (FDI) in electronic commerce.

3. Internationally, what is the scenario of e-commerce and what are the aspects which is governing it thereof?

E-Commerce is growing at tremendous rate at the international level this growth can be noticed from the sales in e-commerce that was 1.3 Trillion USD in 2014 and 3.5 USD today approximately 3 times in five years.²This industry has become one of the most important industries in the world and there is nothing stopping its growth and nothing coming in between to make it the biggest industry in the world. E-commerce is growing and so is the need to regulate it internationally. This is done in various ways at different points of time which are enumerated below.

There are as such many international conventions/instruments which deals with the e-commerce industry internationally they are, the most important of these instruments is the United Nation Commission on Trade Law

² <https://www.shopify.com/enterprise/global-e-commerce-statistics>

(UNICTRAL) which gave its Model Law on Electronic Commerce (MLEC) in 1996. This is the very basic document relating to the e-commerce industry and plays a very important role in the forming of the international rights and obligation on the countries regarding the e-commerce industry. This model by the UNICTRAL was adopted by it in 1996 and the general assembly in a resolution dated 16th December 1996 in its 85th Plenary Meeting also adopted it. In this meeting the general assembly emphasized on the importance of the e-commerce industry and also recognized the need of having an internationally developed law to govern and help the states to develop the law as per these model by UNICTRAL.³

Purpose of the Model Law

The Model Law on Electronic Commerce (MLEC) enable the national litigators with a set of rules which are internationally accepted by the international organizations regarding the e-commerce which aims at removing legal obstacles and also increasing the legal predictability of the industry. It mainly deals with the major obstacle that is the differential treatment of paper-based and the e-commerce industry which may arise due to some statutory provisions. Equal treatment to both these industries is important so that efficiency of both of them can be increased.⁴

Summary of MLEC

The model mainly is being divided into two parts the Part -I which has three chapters' deals with e-commerce in general and the Part-II which includes one chapter i.e. about carriage of goods deals with specific area in e-commerce. The MLEC mainly in its body formulates the legal notion of non-discrimination, technological neutrality and functional equivalence and it also deals with formation and validity of the e-contracts and all the aspects in relation to it.

The United Nations Convention on Contracts for international Carriage of Goods Wholly or Partly by Sea (the "Rotterdam Rules") is the additional convention which can be read in connection with the part two of the of the Model which also deals with the Carriage of goods. This all are covered in the Model and the model is subject to development in the future which is an important aspect to be noted and the laws governing the industry also grow with the growth in the e-commerce industry. The model comes with a guide of enactment which helps the states to formulate the laws in the country and govern the e-commerce industry thereof.

4. What is the relevance of Informational Technology Act, 2008?

India is the 12th country to enact the Cyber Law by adopting the Information Technology Act 2000. In 1996, the United Nation International Commission on Trade Law (UNICTRAL) adopted a model of legislation on electronic commerce, ensuring unity in the legislation of different countries. The first law passed by the Ministry of Commerce of India in 1998 included new legislation, such as the 1999 Bill on Information Technology, which was introduced to Congress in December 1999.

³ UNICTRAL Model Law on Electronic Commerce with Guide to Enactment 1996, https://www.uncitral.org/pdf/english/texts/electcom/05-89450_Ebook

⁴ Trade Facilitation and implementation guide, <http://tfig.unece.org/contents/uncitral-model-law-ecommerce>

Objective of Information Technology Act

The law uses alternative methods of communication and methods of storing information on paper to facilitate the flow of electronic documents from government agencies for operations carried out through electronic data exchange and other electronic means of communication, commonly called "electronic commerce". The Act amended the Indian Penal Code of 1860, the Indian Evidence Act of 1872, the Banking Evidence Act of 1891, and the Reserve Bank of India Act of 1934.

Following are the objectives of the act

1. To grant legal recognition to transactions through electronic data interchange and electronic communications which are commonly referred as electronic commerce in place of paper based communication method.
2. To give digital signature legal recognition for authentication of any information or matter which requires authentication under any law.
3. To facilitate filing of documents electronically with the Government departments.
4. To facilitate storage of electronic data.
5. To give and facilitate electronic sanction to electronic fund transfer between banks and financial institution.

Legal Recognition to electronic record

E governance envisages, as defined by the World Bank, the use of information and communication technologies by government agencies to transform relations with citizens, business and other arms of the government. The promotion of electronic governance is one of the prime objective of IT Act, 2000.

The Information Technology Act provides for legal recognition to electronic records (Section 4) where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is:

- a. Rendered or made available in an electronic form; and
- b. Accessible so as to be usable for a subsequent Digital Signature

Digital signatures, such as written signatures, are commonly used to provide a certificate for related input, called a "message." The message can be from email to an electronic copy or a message sent using the encryption protocol. Thus, you can use digital signatures to verify the origin of the message. IT law governs digital signatures in sections 2, 3, and 15.

Sec 2(1)(p) mentions; "Digital Signature" means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3;

Authentication is the process used to confirm the identity of a person or to prove the integrity of information. Section 3 provides certain provisions in respect of authentication of electronic record which are:

1. Subject to the provisions of this section any subscriber may authenticate an electronic record by affixing his Digital Signature
2. The authentication of the electronic record shall be effected by the use of asymmetric crypto system and

hash function which envelop and transform the initial electronic record into another electronic record.

3. Any person by the use of a public key of the subscriber can verify the electronic record.
4. The private key and the public key are unique to the subscriber and constitute a functioning key pair.

Secure Digital Signature (Section 15)

If, by application of a security procedure agreed to by the parties concerned, it can be verified that a digital signature, at the time it was affixed, was-

1. Unique to the subscriber subscribing it
2. Capable of identifying such signature
3. Created in a manner or using a means under the exclusive control of the subscriber and is linked to the electronic record to which it relates in such a manner that if the electronic record was altered the digital signature would be invalidated, then such digital signature shall be deemed to be a secure digital signature.

An electronic signature shall be deemed to be a secure electronic signature if-

1. The signature creation data, at the time of affixing signature, was under the exclusive control of signatory and no other person; and
2. The signature creation data was stored and affixed in such exclusive manner as may be prescribed

It also provides legal recognition to digital signature (Section 5)

Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document should be signed or bear the signature of any person then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if such information or matter is authenticated by means of digital signature affixed in such manner as may be prescribed by the Central Government.

Also recognizes E-Contracts

The Indian Contract Act, 1872 lays down that for a contract to happen there has to be proposal, assent to the proposal, which transforms into a promise. A promise supported by consideration becomes an agreement and an agreement enforceable by law is contract. Online contracts represent the formation of series of contractual obligations in an online Environment. From a legal perspective, an online contract follows the same pre-requisite as being followed in offline (physical) contract. At a basic level, online contract formation requires online offer or proposal by one party and its online acceptance by the other party. E contracts, by their very nature, are dynamic and often multi layered transactions. With a layered contract, agreement to a contract may not occur at a single point in time. There exists a chain of successive events; e offer, e acceptance, consideration, etc., combination of which may lead to electronic contract formation

5. What are the collusive trade practices entered into in the e-commerce industry?

To understand the particular concept it is important to understand the meaning of Collusion first:

“agreement between people to act together secretly or illegal

ly in order to deceive or cheat someone”⁵

Collusion between two or more firms is done so that they both can earn good amount of profits, in this process the consumer is the one who actually is in the loss.

In the similar sense cartel means:

“A cartel is an organization created from a formal agreement between a group of producers of goods or services to regulate supply to regulate or manipulate prices. in other words, a cartel is a collection of otherwise independent businesses or countries that act together as if they were a single producer and thus can fix prices for the goods they produce and the services they render without competition.”⁶

Making a cartel is the most visible form of collusion done by the firms, if there is a cartel formed by the different producers then it will be very difficult for the consumers to purchase any good from the market as these producers will defy the forces of demand and supply and all the produce by them will be sold at a price decided by them, which is against the competition in the market and also the against the consumer satisfaction.

The internet as a new medium of trade and the e-commerce industry possess a high risk of collusion. With the increase in the importance and growth of the industry the concerns regarding the new medium of business i.e. the internet and the new B2B (Business to Business) electronic marketplaces for online co-ordination of sales and purchases between the companies is increasing. This type of business includes high level of transparency (in terms of price) which usually results that the firms involved in the business making cartel for the conduct of the business and hampering the competition in the market. The other aspect of the IT development such as Internet chat rooms, information-rich company websites and other type of e-commerce related developments may help the companies with good knowledge of this misusing the same.⁷

Certain dynamics within e-commerce markets may prompt or facilitate anticompetitive collusive and unilateral conduct by economic operators. In particular, there are growing concerns about the emergence of dominant online platform operators, which conduct business across multiple product segment and benefit from, inter alia, network effects and significant data collection advantages. In addition, the increasing transparency and use of automated tools in e-commerce markets may pose additional risks for competition among online retailers.

6. What is the role of Competition Commission of India in this matter?

Competition promotes allocative and productive efficiencies, innovation, consumer welfare, and economic and political democracy is an essential condition for national competitiveness. Keeping the competition alive in the market is very important thing and it cannot be done the firms indulge in collusive activities hampering the level of competition. The role of Competition Commission of India (CCI) comes here. The Competition Commission is set by the Competition Act, 2002, which is a very important step taken by the government. Act provides for a Commission so

⁵ <https://dictionary.cambridge.org/dictionary/english/collusion>

⁶ <https://www.investopedia.com/terms/c/cartel>

⁷ <http://www.konkurrensverket.se/globalassets/forskning/uppsatser/nils-fjelkegard-68-2010>

as to: eliminate anticompetitive practices, promote and sustain competition, protect consumers' interests, ensure freedom of trade.⁸

Objectives of the competition Act 2002

The most important purpose of Competition act is to protect the interests of the consumers by providing them good products and services at reasonable prices. The interest of the consumers is important, the very formation of the whole Competition act was done to protect the interests of the consumers. Also it promote healthy competition in the Indian market by taking various measure so that no one is wronged. The interests of the smaller companies is also prevented by the act and it also prevents the abuse of dominant position in the market. Basically it prevents those practices which have an adverse impact on competition in the Indian markets and maintains freedom of trade in markets. Last but not the least it regulate the operation and activities of combinations (acquisitions, mergers and amalgamation).⁹

The Act mainly covers these aspects

1. Prohibition of anti-competitive agreements
2. Prohibition of abuse of dominance
3. Regulation of combination (acquisition, mergers, and amalgamation of certain size)
4. Establishment of the competition commission of India
5. Power and functions of the competition commission of India

The role of the Competition commission of India regarding the anti-competitive acts of the e-commerce will be the same as it has in normal context. It is necessary to protect the paper-based industry and the commission is taking appropriate steps for the same it is trying its level best to help the people getting affected by the e-commerce giants. The problem of high level of transparency and the collusive practices along with the cartelization is being looked upon by the Competition Commission. There have been many cases in the recent times when even the e-commerce giants are also punished for their wrong deeds.

The problem of cartelization is the most important aspect on which the competition commission is taking a part. All the ways in which cartelization can take place is being checked by the commission. There are many provisions in the act which provide for the necessary criteria's to be fulfilled by the firms before entering into any method of combination. All the firms entering into merger or any other kind of combination have to first take permission from the Commission, also there are guidelines regarding each type of combinations in the act and they are strictly should be followed by the companies.

The commission also looks after the collusive trade practices or any other practices by the firms which may hamper the competition in the market. Nowadays firms are developing new ways to do collusive acts and the E-commerce have aided them to a large extent by providing them with a platform on which at first there was no one governing the rules, however now there are many governing measures for the same and it have become hard for them to

do any kind of act which hampers the competition in the market.

Analysis and Conclusion

This paper was a comprehensive study of all the aspects related to the e-commerce and discusses that in reality the e-commerce world has been for us a boon or a bane. The reality is however sad, however there are many good things which the e-commerce industry has provided us with and thereby made our lives very easy as compared to before but the reality is that it has not been that good if seen from a proper perspective, a perspective of how it really affected our lives in a good way or a bad one.

The e-commerce as discussed in the first part of the paper has helped us grow in many ways but what we cannot see is its growth real or imaginary. Is it something which just created for us to see and latently in the hands of some powerful people of the industry who are really controlling it? The bad effects of the E-commerce industry are always there and it has always been hard to see them. But they eventually bring upon its true face and so the laws are made to protect people from getting into the said illusion. Making laws for something is the basic prove that the thing can turn to be harmful for the society and it is very important to govern the industry by making some laws with that respect.

There are various laws made in that respect in India as well as internationally. The whole system of the e-commerce is taking us into to the hands of the big corporates who are now able to use us as they want. It is very hard to resist from the temptation which these people put us in front of. The problem increases with the increase in the share of e-commerce in our lives and at one point it would be almost impossible to do anything in that regard. The UNICTRAL saw the bad effects and what type of problems can arise in the world due to e-commerce and it made MLEC to protect the harmful effects of E-commerce to take an upper hand on the people and start affecting their lives without them knowing it. Giving international recognition to a field and making a law in that regard and then asking other countries to try and follow the said model itself shows how much it is important for a country to take steps regarding the industry otherwise people will face many problems.

The Information Technology Act in India is the part of law which deals with the e-commerce industry mainly, there are other laws too but IT act is very basic law which primarily focuses on E-commerce. India is a big and a rapidly developing country and so is developing the industries in India. E-commerce has also gained prominence in India, in the recent times more and more importance is being given to e-commerce. The development however is not very good thing there might be some problems which people are going to face with the said development.

The e-commerce industry brings with it many ways in which big corporates can exploit the people without them even knowing about it. Advertising is the best example which can prove the same, advertising is always being an important part of business for the corporations and we don't even know how these advertisements affects us. While we see some commercial we don't feel anything but that thing is actually now sticks in our sub-conscious mind and while we go for shopping it usually happens that we choose the good we have seen the advertisement of the whole process is implemented so precisely that we don't even have a hint of what has really happened to us. There many other ways

⁸ https://www.cci.gov.in/sites/default/files/presentation_document/19

⁹ <https://www.jagranjosh.com/general-knowledge/competition-act-2002-1553606677-1>

in which e-commerce is affecting the lives of people of the country.

Then comes the problems which are very much visible but there is nothing which can be done in that regard the problems about which the whole paper is written the problem of collusive practices in the market by these big corporations and e-commerce giants, there are many ways in which collusive practices can be done and the big companies like these find it very easy to do whatever they want because the things which they are doing are related to e-commerce for which there very strict regulations to be followed and this give them a ease to perform any types of collusive activities.

Cartelization in the market is the very basic example of collusive practices by these huge corporates. The firms which usually forms the cartel are the ones who already have a large market share and after they form a cartel now it is very easy for them to dominate the market without any problem or retaliation by anyone in the world. The role of the Competition Commission starts now, it is the competition commission which have to take measures to protect this kind of behavior by the big corporates. The Competition Act have provided for all the possible measures that the commission can take to achieve this. It provides for measures to protect the collusive trade practices as well as it protects the big firms form taking advantage of their size in the market. The cartelization of the firms is also prevented by the Competition Act. Basically competition Act provides us the way to protect the competition in the market.

Overall this paper has dealt with all the basic ideas and also deep about some particularly important topics. This paper can give an insight to the readers of the e-commerce and aspects related to it. This paper also have covered why e-commerce can be bad for the economy if not regulated properly and what actually is the reality of the e-commerce in country.

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