

## CCI AND TARAI: Are They Successful in Promoting Competition?

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### Introduction

The relationship between the three economic entities has always been a widely studied subject matter in the field of economics, however before understanding the underlying relationship, it is first essential to grasp the meaning of the concepts first. Firstly, consumers, or final consumers, generally refer to, the people who actually consume the product, or in essence, purchase without any intention of reselling it or using it for manufacturing. There exists no person in an economy who is not a consumer, after all, it is impossible to survive without consuming, which is why, it is just as Smith says, "consumption is the sole end and purpose of all production" and that "the interest of the producer ought to be attended to only so far as it may be necessary for promoting that of the consumer". Out of everything else, consumer interest is arguably the most important object of protection, since consumer interest is everyone's interest, and that is where government intervention comes in. Government intervention refers to government actions to influence the way financial markets or industries operate. Government intervention exists primarily to protect the consumers from being exploited by unfair market practices, and legally safeguards their interests. It should be noted though, that government intervention also serves to protect producer, distributor, and other economic parties' interest, however this paper shall only take government intervention with regards to consumer's interests into its purview.

This is where monopoly ties in and although it has been defined above, I would like to present a definition of my own, in my opinion, a monopoly in essence is the power vested in a seller, which allows it to exploit the consumers, now, whether the seller chooses to exploit them or not is a different matter. It is an amalgamation of several factors such as dominant market share, unique product, barriers to entry, which even individually give a seller a heavily favourable position in the market, together form what is called a monopoly. Generally, though, sellers holding the positions of monopolists, tend to shove aside consumer interests for something much more lucrative, profit. Just as consumers are motivated to get the best for the cheapest, as unscrupulous as it makes them seem, sellers would almost always want to sell their product for the maximum possible price, irrespective of whether it would be in the consumer's interests or not. Government intervention exists in many forms to prevent the monopolists from taking advantage of

consumers who have no other sellers to look to and are desperate for the product, such as in the form of price ceilings, prevention and regulation of mergers and competition laws, the latter of which is discussed below.

The government always tries to promote competition in the market and stop the enterprises from becoming a monopoly in the market. The competition in the market helps the consumers have the broad range of services at a competitive price. The competition in the market not only helps the consumers but also the producers in many ways like competition helps the producers to understand the consumers need and developing products and services as per the need of the consumers. To maintain competition in the market the government use antitrust and competition law that helps in promoting free and fair competition in the market. The main object of these laws is to foster innovation, productivity and growth, all of which create which create wealth and reduce poverty. In India government has setup Competition Controller of India (CCI), under the Competition Act, 2002. This laws mainly focuses on encouraging competition and curbing monopolies. This law is on the same lines as the anti-trust law in United States Of America.

The CCI has been mainly formed to look in the activities of enterprises and prevent them from becoming a monopoly. Since its formation it has been working to promote competition in the market and has been curbing the enterprises which tried to become a monopoly. To understand it better we will take a case of Google and how has CCI been working to curve the monopolistic approach of Google in India.

### **Google's Antitrust case in India-**

The case of CCI and Google started back in 2019 and CCI has examined many of Googles practices relating to various markets. First of that is regarding Android operating System (OS). Smartphones run on an OS and one of the most used OS is Android which Google acquired in 2005. According to Counterpoint research 600 million smartphones in India run on Google's Android OS. Google manages this Android OS and other applications like Chrome and playstore which are also pre-installed in smartphones. Mobile manufacturers use Android in their phones and through this OS other apps of Google also run in these smartphones. Moreover, the Android OS only operates the smartphones or we can say covers basic feature in an smartphone. Now to use applications in smartphones, manufacturers have to enter into agreement for the rights and obligations such as the Mobile Application Distribution Agreement (MADA), Anti-fragmentation Agreement (AFA) etc. Android Compatibility Commitment Agreement (ACC), Revenue Sharing Agreement (RSA), etc. The CCI held that through these agreements the manufacturers were bound to use these apps and they could not look for other alternatives. Moreover through the MADA restrictions the smartphones were pre-installed with chrome browser, Google Mobile Suite (GMS), etc., and the users cannot uninstall it.

Google is the dominant player in the app store market. According to the EU, 90% of the apps downloaded in smartphones are from play store, which is pre-installed in all android devices. The CCI held that with play store being pre-installed in the android devices, consumers do not have the option of downloading apps outside the play store. Google's reply to this investigation was that in the App Store it is facing a direct competition from Apple. The CCI on examination concluded that playstore of Google and App Store of Apple are no competition to each other and neither are substitute to each as Apple focuses on high end devices and it has its own ecosystem not like Google.

Another of the Google's practices that the CCI has examined is that Google's domination in field of internet search like chrome, Firefox, etc. In the year 2021 Google had 92% dominance in the internet search engine market. Google had Revenue Sharing Agreements (RSAs) with the mobile manufacture which allowed its search engine to be there in mobiles and cutting all other competition. According to CCI by this agreement Google got the mobile search queries of the users and it helped google in protecting the advertisement revenue and exclusion of any other competitors from the the search engine market. Moreover, due to various agreements with manufacturers many of the other apps of Google like YouTube gained edge over other competitors. The Commission said: "With these agreements in place, competitors never stood a chance to compete effectively with Google and ultimately these agreements resulted in foreclosing the market for them as well as eliminating choice for users".

Measures directed by CCI to Google for indulging in anti-competitive practices

The CCI has asked Google to take measures against these practices. Some of the measures are:-

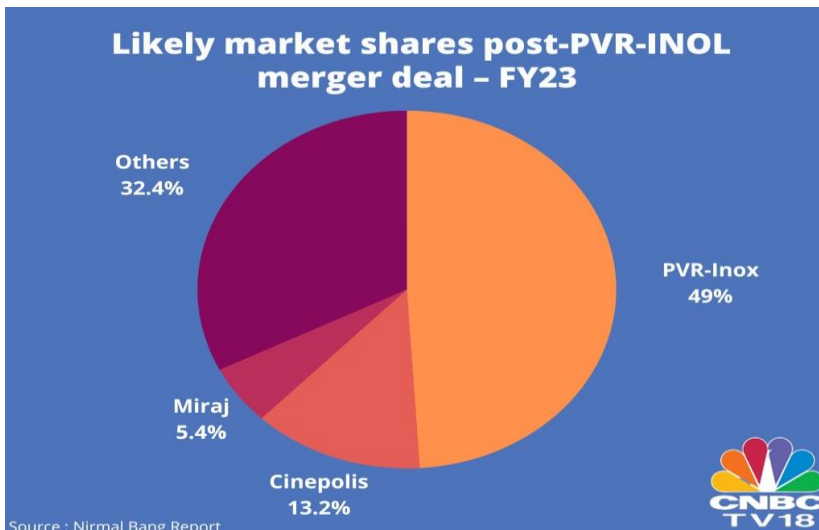
- The mobile manufacturers should be given the choice to which of the apps they want to pre-install in their smartphone and which of the apps not.
- The licensing of the playstore should not be based on condition of pre-installing Google search engine, Gmail, YouTube, Chrome browser, etc.
- Allowing the users to choose which of the default search engines they want while setting up their smartphones.
- No restrictions should be there on un-installing the pre-installed apps.
- There should be no monetary or other incentive offer from google to the mobile manufacture for ensuring exclusivity for its search engine.
- Not only these but the CCI also imposed a penalty of over Rs1,300 crore which could increase more based on other findings.

To promote competition CCI has been effective in many cases and has been doing well to not let the enterprises exploit the market. But, this is not the case always. In many of the cases CCI had failed to take

any action against the bad practices of the enterprises and failed to promote competition which is its primary objective. Like in the case of PVR and INOX Leisure merger.

### **Case of PVR and INOX Leisure merger-**

On the 22 march of 2022, two giants in the cinema and entertainment industry of India, namely, PVR Cinemas and INOX Leisure, announced their merger. The Consumer Unity and Trust Society (CUTS), a



non-profit organisation, requested last month that the Competition Commission of India (CCI), the country's fair-trade authority, investigate the proposed merger. The CUTS complaint, filed on July 27, claims that the PVR-INOX arrangement would not have qualified for an exemption from the regulator's required merger examination if not for COVID-19 lockdowns. The proposed merger would most definitely result in a monopoly since the merger will give the PVR-INOX combine a size advantage with a pan-India network of more than 1,500 screens. PVR currently has 871 screens and INOX 675 screens, whereas their main competitors, Carnival and Cinepolis have 400 screens each (Pandey 2022). The Competition Commission of India (CCI) on Tuesday rejected a complaint against the proposed merger of multiplex chains PVR and INOX Leisure, saying apprehension of likelihood of anti-competitive practices by an entity cannot be a subject of probe.

### **TRAI**

TRAI another of the government agencies formed to promote competition in the market. Telecom Regulatory Authority of India was created to promote growth of telecommunication in India and enable that the country have a leading role in the emerging global information society. The main objective of TRAI is to provide transparent environment and promote a fair competition in the market.

### **TRAI and Jio**

Mukesh Ambani's takeover of telecom sector with the help of Indian authorities has driven the small rivals out of business, now only two players remain in the market Bharti Airtel and Vodafone. Both the rivals are in a struggling stage and Vodafone might not survive in the long run. Several years back India had numerous players in the telecom sector like Aircel, Telenor, etc. But now there are only three left and there is a serious risk of monopoly in the market. Jio when launched its services in India it provided free services to the consumers but later on when had large number of customers they started charging from them. Due to these actions of Jio other competition ran out of business and those who survived had to adopt the strategy or pricing of Jio. The job of TRAI was to ensure that these things does not happen in the market. There are only two explanations for India's current situation: either regulators have consistently failed to do their jobs, or they have favoured Ambani's. Recent events point to the latter. One of the main objective of TRAI is to maintain a FairPlay in the market. But TRAI has been alleged multiple time to not have fulfilled its objectives. Allegedly, TRAI bent its rules many times to let Jio become a market leader in a span of one year. TRAI allowed Jio to test its services for a longer time and with a large number of subscriber than the industrial norm. TRAI also modified its definition of "significant market power" to exclude Jio from strict scrutiny. Initially, market power was defined by total network activity; however, the parameters were changed to subscriber share and gross revenue. According to the first definition, Jio was a significant market power, but not according to the second.

### **Why barely any antitrust case succeeds in India –**

CCI filed many antitrust cases in India, but only a few were successful. The underlying reason why the CCI denies most appeals and investigations into possible mergers and potential abuse of dominant market positions is simply that India is a developing economy. The CCI exists to protect consumer welfare, and by allowing these mergers and corporations to hold dominant positions, it promotes trade and commerce within the country while also providing foreign players with an incentive to invest in the economy, resulting in lower prices and higher standards of living for consumers in the long run. If the same cases had occurred in a developed economy such as the United States, the outcome could have been very different.

### **Conclusion**

The CCI and TRAI are the government organisations to promote competition in the market and prevent enterprises from becoming a monopoly in the market. The main function of these organisations is to promote consumer welfare and see that there is not exploitation of consumers by the enterprises. In many cases they are successful in promoting competition but most of the time they fail to promote competition as discussed in the case of merger of PVR-INOX, the CCI was not effective in taking any actions these

enterprises and dismissed the case and did not pass any antitrust case against PVR-INOX. Another case was of telecommunication sector where TRAI was supposed to take action against anti-competitive steps of Jio instead TRAI provided support to Jio and allowed them to continue their anti-competitive practices in the market. But, we cannot straight away say that CCI and TRAI have been incompetent in their work. India is a developing country and CCI and TRAI exist to promote consumer welfare within the country and by allowing mergers like that of PVR-INOX and allowing enterprise to hold a dominant position like that of Jio, this would result in lower prices and higher standard of consumers in future. Thus, it can be said that CCI and TRAI are not completely incompetent.

### **CITATIONS**

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