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“UNRAVELING COMPETITION LAW IN THE ERA OF ARTIFICIAL INTELLIGENCE: A COMPREHENSIVE EXPLORATION”

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INTRODUCTION

Artificial intelligence or AI-integrated company activities are upending industry standards and competitive rules around the world. The rise of big data and artificial intelligence has fueled the unparalleled expansion of tech behemoths like Google, Amazon, and others and Meta. Algorithms offer the value that the end-user receives in all of these businesses. While it is undeniable that programmers and engineers design the AI software engine to deploy the algorithms, value generation eventually occurs through digital automation.² The recent wave of AI growth has altered competitive dynamics in unpredictable ways. While Indian politicians debate a revision of the existing rivals law framework, the incorporation of AI has presented new difficulties that must be addressed. As the economy of India and enterprises face a significant AI change, the repercussions of competition legislation are becoming increasingly worrying. AI-powered technologies are not only altering market dynamics, but also posing complicated techno-legal and regulatory concerns. It is critical to use expert opinions when investigating the delicate interplay between competition law and AI. Companies that have amassed huge and diversified datasets over time may have a competitive edge in developing and using AI products: enormous amounts of data are easily accessible for AI training.³ While this may benefit in innovation efforts and the creation of superior AI solutions for clients, competition enforcement will strive to guarantee that obstacles to entry are not constructed, thereby hindering the growth of new AI systems. Following all, micro AI developers require data access for creating their product offers. Competition legislation will have an impact not only on the components that make up AI, but also on the process of building of AI itself. While open-source models may be leading the way in expanding AI convenience, authorities have expressed skepticism, with the US FTC highlighting the potential for abuse through "open-first, closed later" tactics, in which freely available principles are initially adopted by interested enterprises but later closed off by means of business-related and technological practices. AI technology has the ability to significantly alter competition while also posing new policy challenges. Among the issues that AI may pose are:

1. Market Consolidation: Market consolidation can occur as a result of the overabundance of information and artificial intelligence technology among a few organizations.
2. Cooperation and Price Fixing: Algorithms can independently modify prices in reaction to competitors' pricing activities, resulting in tacit cooperation. In such a case, the Authority's ability to combat anti-competitive behavior enabled by AI becomes tough.

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² Mr. Anton Korinek, Mr. Martin Schindler, and Joseph Stiglitz, Technological Progress, Artificial Intelligence, and Inclusive Growth, <https://www.elibrary.imf.org/view/journals/001/2021/166/article-A001-en.xml> , last visited on 20 nov 2023.

³ The Global AI Race: Unveiling the Competition for Technological Superiority and Unraveling the Latest Developments, 12 June, 2023, <https://tango-project.eu/articles/global-ai-race-unveiling-competition-technological-superiority-and-unraveling-latest>, last visited on 17 nov 2023.

3.The intellectual Property and Standardizing processes: Patent and data access issues can collide with competition legislation. It may stifle creativity and fair competition.

TRADITIONAL COMPETITION LAW IN INDIA

The Competition Act of 2002, that oversees competitive markets in India, has several goals in mind when it comes to market regulation. The Act forbids anti-competitive behavior, the abuse of powerful market positions, and business-to-company agreements that limit competition. In a nutshell, it seeks to maintain equal opportunities for everyone in the market. Currently, India's Competition Act of 2002 does not specifically mention AI, which might make understanding and applying competition legislation to AI-related practices challenging. This could make resolving cases involving AI-related competition issues more difficult. Competition law additionally becomes significant in the framework of agreements that establish one standard of technology practices and standards. While rule-setting is not inherently problematic, the production of the standard must adhere to competition law principles to ensure that standard-setting activity doesn't end up in collusion among competitors or market foreclosure. Softer measures, such as the implementation of standards of behavior or best practices, are likely to be closely scrutinized by authorities in order to ensure equitable competition.⁴A number of the competition concerns expressed by regulators revolve around the possibility that dominant firms may use AI to implement anti-competitive practices. For instance, regulators have cautioned that artificial intelligence (AI) can be used to adopt predatory pricing techniques, with AI being utilized to quickly analyze pricing information and determine a competitor's response to market changes. Dominant corporations may also utilize AI embedded in consumer-facing goods to eliminate competitors or drive users in a specific direction, such as towards their own services, without the customers' knowledge. The fact that AI may be used to collect consumer information such as choices, brand loyalty, and purchase patterns, and deliver specific prices determined by estimates of the consumer's willingness to pay, has not gone unnoticed. Regulators are expected to keep an eye on AI, aware that in the hands of big corporations, technology might make anti-competitive discrimination simpler to implement.⁵

The Google search bias case [Google LLC v Competition Commission of India, Competition Appeal (Appellate Tribunal) No. 1 of 2023, resolved on 29-03-2023] is a recent example of unfair competition. The National Company Law Tribunal in New Delhi examined the Competition Commission of India's (CCI) judgment in a competition appeal brought by Google LLC and Google India Private Limited. Following the rules of the Competition Act, 2002, the CCI held Google culpable of misusing its dominant position in the market and levied an administrative penalty of INR 1337.76 crore (roughly \$182 million). The split decision of Justice Ashok Bhushan and Dr. Alok Srivastava (technical member) maintained the CCI's penalties but overruled some crucial recommendations. Google claimed that the CCI's order was confirmation biased and was based on a similar order issued by the European Commission in 2018. Google stated that its contracts did not restrict device makers from pre-installing competitors' apps and that market dominance did not always imply market abuse.

⁴ The effects of anti-competitive business practices on developing countries and their development, Prospects, https://unctad.org/system/files/official-document/ditccplp20082_en.pdf, last visited on 14 nov 2023.

⁵ Artificial Intelligence and Collusion, 20 dec 2018, <https://link.springer.com/article/10.1007/s40319-018-00773-x#citeas>, last visited on 21 nov 2023

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The CCI, on the other hand, claimed that Google utilized its dominating position in one relevant market to join additional relevant markets via responsibilities granted by MADA and AFA/ACC. The CCI maintained that Google, as the market's dominant firm, bore a particular duty and that exploitation of its dominant position was a violation of Section 4(1) of the Competition Act. The CCI's directives to Google included the following: OEMs should not be forced to pre-install a bundle of applications, Play Store licensing shouldn't be tied to pre-installing Google search services or other apps, Google shouldn't restrict the use of Play Services APIs to prejudice OEMs, developers of apps, and rivals, Google shouldn't provide rewards to guarantee exclusivity for its search services, and users should have the versatility to switch between search services. The Tribunal determined that Google misused its position of power by placing unreasonable demands on OEMs and abusing its control in the internet search and app store markets for Android OS. It affirmed a large number of the CCI's directives while excluding a few. The Tribunal also upheld the penalty calculation with regard to Google India's income. As a result, Google was ordered to submit the amount of the penalty (after modifying the 10% penalty amount deposited pursuant to the ruling dated 04.01.2023) over 30 days.

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CONCLUSION

The present Competition Act of 2002 in India does not directly address AI, posing substantial policy concerns. Artificial intelligence (AI) incorporation into corporate processes is altering industry norms and competitive landscapes around the world. AI's trans-formative impact on the marketplace is clear, with organizations with large and diverse datasets having a competitive advantage in developing AI solutions. However, the possibility of market reorganization, cooperation resulting in price mounting, and proprietary rights and standardization difficulties all require careful examination under the regulations of competition law. Looking at the situation in the Indian subcontinent, the Competition Act of 2002, which oversees competitive marketplaces, currently lacks clear AI provisions. This gap complicates the application of competition law to AI-related procedures, particularly when resolving instances concerning AI-related competition issues. Concerns highlighted by regulators revolve around the prospect of dominant firms adopting AI for unlawful conduct such as exploitative pricing and unlawful discrimination made possible by enhanced data analysis. As the AI landscape evolves, an extensive approach to competition legislation is required to stimulate innovation, protect fair competition, and handle the problems brought by AI-driven transformations. In order to navigate the intricate relationship between AI and competition law, it will be necessary to strike a balance between fostering technical progress and avoiding anti-competitive actions. In the Google v the Competition Commission of India instance, for example, Google was found guilty of abusing its dominant position. The National Company Law Tribunal upheld the CCI's penalty but modified many orders. The case emphasizes the significance of adding AI-specific provisions in competition law in order to effectively limit the impact of AI on competition and create a level playing field in a technologically evolving environment.

⁶ National Company Law Appellate Tribunal Google Llc & Anr vs Competition Commission Of India & ... on 29 March, 2023, <https://indiankanoon.org/doc/54000789/>, last visited on 16 nov 2023

⁷ CCI imposes a monetary penalty of Rs. 1337.76 crore on Google for anti-competitive practices in relation to Android mobile devices, 20 OCT 2022, <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1869748>, last visited on 20 nov 2023