

Judging a Book by its Cover?: Analysing the Indian Approach to Defining Platform

Markets

Shilpi Bhattacharya* & Pankhudi Khandelwal**

Abstract

One of the challenges before competition law today is to develop criteria for market definition in platform markets. This is because the old tests for market definition do not neatly apply to platform markets, given that these markets have certain peculiarities. For instance, should platform markets be defined as one or separate markets on each side of the platform? As platforms are of different types, it is difficult to develop rules that can account for the diversity of various platforms. Platform markets are also dynamic and our understanding of them is evolving. For this reason, with a few exceptions, competition authorities have been hesitant to lay down rules on how platform markets should be defined – to the point that market definition has been left open in many cases.

However, the Competition Commission of India (CCI), which is an active antitrust enforcer, has defined platform markets or given its opinion on market definition of platforms in a number of cases. However, there is limited literature on the CCI's market definition practices. This presents an interesting opportunity to examine the extent to which Indian competition law is ready for the challenges presented by digital markets and to analyse the CCI's decisional practice with specific focus on market definition. The paper first provides a framework within which such an analysis can be conducted by highlighting the key issues identified in academic scholarship for defining platform markets. It then applies this understanding to the analysis of recent CCI orders. The study finds that the CCI has not changed the way it defines markets to account for the particularities of multi-sided platforms. The CCI's approach has failed to consider the interdependencies operating on both sides of a platform which has led the CCI to make errors in assessing the competitive constraints operating on market participants, to make its subsequent analysis of dominance and abuse ambiguous and ultimately to make the process of market definition redundant. At the same time, CCI's recent telecom market study report presents some hope that its approach is evolving with the times.

Keywords: Multi-sided platforms, indirect network effects, market definition, digital markets, competition law.

* Professor, Jindal Global Law School, Sonapat, India.

** Lecturer, Jindal Global Law School, Sonapat, India.

Introduction

Market definition is an important part of analysing the anti-competitive effect of a practice. It helps specify the framework within which the competitive concern arises along with identifying competitors and market shares (US DOJ and FTC 2010). Market definition involves identifying a relevant product and geographic market. The analysis in this paper is limited to relevant product markets.

While most competition jurisdictions use a standard set of rules for market definition, these rules are not easily applied to platform markets with two or more than two sides to the platform. While there is some debate on an agreeable definition of two-sided or multi-sided platforms, mostly, these markets have been defined as markets with network externalities which can cross-subsidise between different categories of end users that are parties to a transaction (Rochet and Tirole 2003). Multi-sided platforms have two fundamental features i.e. they enable direct interactions between two or more sides and each side is affiliated with the platform (Hagiu and Wright 2015). Although two-sides may be present in most of the markets, the network externalities between the two groups is what makes a market a two-sided platform (Rysman 2009, 126). For instance, Facebook is a multi-sided platform which provides free services to its consumers and monetize their investment by charging the advertisers who advertise on the platform. So, while advertisers pay for consumer's attention that they access through the platform, consumers enjoy free use of the platform. This is because one of the noteworthy features of two-sided platforms is cross-group effects or interdependencies between user groups on both sides of the platform known as indirect network effects (Evans and Schmalensee 2016, 25). The reason that platforms provide free services to consumers is because greater number of consumers on one side of the platform makes the platform more

attractive to advertisers on the other side as they gain more ‘eyeballs’ for their products. These unique features of platforms pose new challenges to market definition in competition law such as whether platform markets should be defined as one market for both the sides of the platform or as separate markets on each side of the platform.

There is a significant amount of literature on the nature of multi-sided platforms and how to define them. Yet, there is no consensus or standard approach to defining these markets in the decisional practice of competition authorities globally. Traditional ways of defining the market such as through the characteristics, price and intended use of the product have been found to be inadequate for platform markets because they do not capture the inter-relatedness between the two sides of a platform. The products offered on both sides of a platform may not have the same characteristics, may be priced differently and have different uses. Yet the two sides exert competitive constraints on each other because of their inter-connectedness. For instance, in an e-commerce platform, characteristics of buyers and sellers on the platform will be different but an increase in price on the buyer’s side of the market decreases demand by buyers which will reduce sellers on the other side of the platform, thereby, creating a feedback effect on all sides of a two-sided or a multi-sided platform (OECD 2018). These concerns also apply to other tests of market definition such as the hypothetical monopolist test as platforms’ pricing decisions are based on profits arising on both sides of the platform.

The aim of this paper is to examine how India’s competition authority i.e., the Competition Commission of India (CCI) has defined platform markets and to assess the strengths and weaknesses of CCI’s reasoning specific to market definition. This paper draws from international scholarship and jurisprudence to develop a framework of analysis for market

definition in platform markets. This framework is used to evaluate market definition by the CCI.

The CCI has had an opportunity to examine a number of cases involving two-sided and multi-sided platforms and has engaged in some kind of analysis of market definition in almost all of them. This paper examines some of the most recent and important CCI orders relating to platform markets. Some of the orders examined are preliminary orders in which the CCI has given an initial or *prima facie* opinion of how it views the market. Evaluating preliminary opinions is relevant because the CCI can close a case based on its preliminary opinion. Further, for cases that are not closed at the initial stage, the CCI's initial opinion on market definition may be used in its final order. This paper contributes to the existing literature as one of the few to explore CCI's market definition in platform markets in some detail. While authors have talked about the competition issues in the digital economy (Parsheera, Shah and Bose 2017) and competition regulation in two-sided markets (Krishnan and Unni 2019), there is insufficient discussion of CCI's practices in defining platform markets. There is some literature on zero-price platforms and how the Indian competition law applies to them (Jatania 2019) and the response of the Indian competition authority in dealing with the emerging issues in competition law enforcement in digital markets (Malik, Chakrabarti and Khan 2020), however, the papers do not go deep into the issues with respect to defining relevant market in such cases. Others have suggested finding an alternative to market definition process in e-commerce cases (Mehta and Kumar 2020).

The article has been divided into three parts followed by the conclusion. Part I highlights the approaches for defining multi-sided platforms based on the different kinds of indirect network effects that these platforms exhibit. Part II looks into the competitive

constraints that need to be taken into account while ascertaining whether the market should be defined as single or separate markets. Part III analyses the CCI's approach to market definition in various kinds of platform markets such as search engines, consumer communication apps and travel platforms. The article then concludes by outlining the reasons why the CCI should not define platform markets in the same way as it does other markets.

Part – I – Approaches for defining the market for multi-sided platforms based on indirect network effects

There are many views on how multi-sided platforms should be defined. While some scholars are of the view that since our knowledge of platform economies is still developing, it is too early to suggest a pre-determined criterion for defining a relevant market (Kathuria 2019, 257), many scholars have come up with certain criteria to define platform markets based on the kind of indirect network effects they exhibit. This section discusses, broadly, the various approaches to market definition of multi-sided markets based on these characteristics.

Indirect network effects can flow in one direction, for instance, in platforms such as Facebook and Google which are financed through advertising, increase in the number of consumers on one side leads to increase in the advertisers on the other side since it provides more attention for their products, however, increase in the advertisers does not necessarily affect the number of users. These effects can also flow in both directions such as in e-commerce platforms where increase in the number of buyers on one side, increases the number of sellers on the other side and vice-versa. This has been referred to as the chicken and egg problem: where to attract buyers, a platform should have a base of sellers, but sellers will be willing to join the platform only if the platform can attract many buyers (Caillaud and Jullien 2013).

Based on the kind of indirect network effects exhibited by these markets, they have been categorised into different types such as markets that facilitate exchanges between buyers and sellers, advertising markets such as magazines, newspapers, television etc. and transaction systems such as card payment systems and software platforms (Evans and Noel 2005, 108). These categorisations are used to suggest that the market should be defined differently based on the nature of the platform. One such categorisation of two-sided platforms is as transaction and non-transaction markets (Filistrucchi, Geradin and Van Damme 2012).

Transaction platforms facilitate simultaneous transactions between both sides of the platform which is why they have more prominent indirect network effects and interrelated price and demand on both sides (Klien et al. 2006, 571, 580, 583). For instance, card payment systems facilitate a transaction between the cardholders and merchants which can be contrasted with media markets, such as newspapers, where there is no transaction between the advertisers and the consumers side (Wismer and Rasek 2017). Thus, some argue that while a single market may be defined in the case of transaction markets because of the indirect network effects between both sides, separate markets may be defined for both the sides of a non-transaction market as both sides of the platform may have different substitutes on each side. Since users on different sides of non-transaction platform have different economic interests, it is argued that it is inappropriate to view platform competition as being for a single product offered at a single price (Katz and Sallet 2018, 2170).

Based on the distinction between transaction and non-transaction platforms, the US Supreme Court in the *Ohio v. Amex* (138 S. Ct. 2274 (2018)) case, with a 5:4 majority, held that credit-card companies operate in a two-sided transaction market because the interaction between the two groups (cardholders and merchants) is a transaction and therefore, should be

defined as a single market. Relying on the literature that suggested differentiating between transaction and non-transaction markets, the court observed that because two-sided platforms have to take indirect network effects into account in their pricing decisions on either side, striking a balance on each side of the platform is necessary as increasing price on one side (for instance, the consumers side) will reduce demand on that side which may lead to change in price and demand on the other side (the merchant's side) (Evans and Schmalensee 2006).

However, some scholars have also argued that there is no requirement of this distinction as there exists a spectrum of interactions between the two sides, with transactions being at one end and 'mere' interactions of various sorts on the other and so market definition should be based on the nature of the externalities between the two sides and its impact on pricing decisions (Niels 2019, 348). Another view is that all two-sided or multi-sided platforms should be defined as a single market since the platform, whether transaction or non-transaction, generates revenue by connecting customers on each side. The rationale behind this approach is that indirect network effects, even if they are weak, play a role in non-transaction markets. For instance, Google has to decide on an optimum level of advertisements that it can show to its users as too many advertisements would lead them to switch to other websites. (Smith and Duke 2020, 25) It has also been argued that the separate markets approach assumes that harm to any one side of users of the platform is harm to competition which is a wrong assumption (Wright and Yun 2019). Further, some argue that regardless of the approach to defining relevant markets, a court might still have to take into account the competitive effects of a conduct on all sides of a platform (Borgogno and Giuseppe 2019). In short, there is no consensus on the distinction made between different kinds of platforms which suggests that it is unlikely that markets would be defined based on these categorisations across jurisdictions.

While the majority decision in the *Ohio v. Amex* case was to define a single market, the minority was of the view that markets should be defined separately on each side based on the conduct in question which was anti-steering provisions used by American express (Amex) to prohibit merchants from steering the cardholders to use other cards due to the high prices charged by Amex to the merchants per transaction. The minority opinion referred to the case of *Times-Picayune Publishing Co. v. United States* (345 U. S. 594, 610 (1953)), where it was held that markets should be defined by focusing narrowly on the good or service directly affected. As Amex's conduct harmed merchant-related card services and not shopper-related card services, only competition in merchant-related services should be considered.

The *Ohio v. Amex* case has led to an interesting debate on the definition of markets based on the differentiation between the transaction and non-transaction markets. The ratio of the case was applied in *US Airways Inc. v. Sabre Holdings Corp* (No. 17-960 (2d Cir. 2019)). The case dealt with global distribution system (GDS) which provides a platform for airlines and other travel providers to distribute information to travel agents and a means for travel agents to search, book and manage travel reservations. The District court had held that GDS is not a two-sided market as changing price on one side of the platform (for instance, booking fee paid by the airlines) does not change demand on the other side i.e., the travel agent side (*US Airways Inc. v. Sabre Holdings Corp.*, 11 Civ. 2725 (LGS)). However, the Court of Appeals for the Second Circuit held that a business is a transaction platform if it offers different products or services, to different groups of customers, whom the platform connects in simultaneous transactions. Therefore, it was irrelevant whether change on one side of the platform affected the other side as long as the business can be categorised as a transaction platform.

However, the distinction between transaction and non-transaction market is not as one-dimensional as seen in the *Ohio v. Amex* case. In the case of *Sainsburys v. MasterCard* ([2018] EWCA 1536 (Civ)), the European Commission, while analysing the two-sided nature of card payment systems, stated that a single market approach is not suitable for assessing competitive effects within four party payment card systems since cardholders and merchants connect to the platform through intermediaries i.e., the issuer bank and the acquirer bank respectively. The case related to multilateral interchange fees (MIF) which is a fee that an acquiring bank pays to the issuers bank for cross-border bank card payments. The court identified three different product market i.e., the ‘inter-systems market’ in which the various card systems compete, ‘issuing market’ in which the issuing banks compete for the business of the cardholders and ‘acquiring market’ in which the acquiring banks compete for the merchants’ business (*Sainsburys v. MasterCard*, para 11). The court defined the relevant market as the acquiring market and held that since the restrictive effects have been found on only one side of the platform i.e., the acquiring bank side, it was not necessary to examine the advantages flowing from the MIF for cardholders, since the advantages could not be enjoyed by merchants (*Sainsburys v. MasterCard*, para 242, 243). Therefore, not all card payment platforms can be defined as a single market and a case-by-case analysis is required depending on the conduct being examined instead of applying the single market approach unanimously to certain kinds of platforms.

A distinction on the basis of indirect network effects has also been made between audience providing (advertising) versus matching platforms (Evans 2003). Matching platforms are a special type of platform the aim of which is to enable the best possible match between heterogeneous user groups, which does not necessarily imply a subsequent transaction between

them (BKartA, 2016). Matching platforms are different from transaction platforms as they exhibit indirect network effects even without any transaction.

The concept of matching platforms has been explored by the Bundeskartellamt (German Competition Authority) in the *BKartA - Immonet/Immowelt* (B6-39/15) merger decision involving online real estate platforms. The platform facilitated interaction between property providers and seekers and therefore required participation from both the sides of the market. While the market definition was left open, it was held that a single market may be defined because of the positive bilateral indirect network effects between both the user groups. Positive bilateral indirect network effects arise because more property seekers will bring more property providers to the platform and vice-versa. In this case, because the platform facilitated a transaction between property providers and property seekers, it was held that such a platform is a transaction platform as opposed to an advertising platform, where the advertising side serves only to monetise the user side of the platform and not as a necessary component of the product offered to the user side. (*BKartA - Immonet/Immowelt* (B6-39/15)) Therefore, in this regard, the authority equated matching platforms with transaction platforms.

Similarly, in the case of *BKartA - Parship/Elitepartner* (B6-57/15), a merger decision between two online dating platforms, the Bundeskartellamt held that dating services by their very nature are matching platforms between two sets of user groups, such as men and women. While it was observed that online dating platforms includes a variety of business models e.g., where only one user group (men) pays or fees are charged for specific functionalities or where additional revenue is generated from advertising, it was held that since the functionalities of the platform was same for both the user groups i.e., men and women, the market can be considered to be a single market. (*BKartA - Parship/Elitepartner* (B6-57/15)) The competition

authority, in this case too, left the market definition open and did not look into other kinds of models which involved transaction fees or advertisers but focused strictly only on the feature of matchmaking between the two user groups of dating platforms.

While in the above case, dating platforms financed through advertising were not in direct assessment of the authority, a case may arise where a merger is taking place between entities providing the same service but through matching and audience providing platforms. For instance, a merger may take place between a dating platform which provides free services to men and women by financing through advertisements and another platform which requires a fee from both men and women. In such an instance, the distinction between transaction and non-transaction platforms or matching and audience providing platforms would not help in assessing the competitive effects when defining the relevant market. The Bundeskartellamt, in the above case, stated that from the perspective of the user groups, the advertising side was not essential which is why this side should be assessed separately (*BKartA - Parship/Elitepartner* (B6-57/15), however, it does not clarify how this separate assessment would take place. A similar situation may arise in the case of Freemium models i.e., platforms that give both free services and provide certain additional features on the payment of a premium. In most freemium models, consumers opt to pay a premium for additional features with no advertisements. In these models, the platform may no longer be multi-sided as the advertiser's side is removed. This leads to the platform offering the advertising model to some users and a transaction model on payment of a fee to others. In such a situation, defining the relevant market by differentiating between transaction and non-transaction markets may lead to incorrect conclusions.

Moreover, some scholars have proposed tests to determine whether multi-sidedness of a platform should be considered for market definition. In this two-stage test the court would first ask: (1) whether the business can explicitly charge different prices to the distinct groups; (2) whether each group's benefit depends on the extent of participation by the other groups and whether that participation varies based on market conditions; and (3) whether the platform is capable of, and generally does, set uniform prices in the markets in which each group participates. Assuming all three factors are satisfied, the court moves on to the second stage and asks whether the challenged conduct is designed principally to ensure the continued availability of the platform's differentiated products. If so, the relevant market should encompass the market segments in which all sides of the platform operate. (Ward 2017, 2089) To evaluate these factors of whether the platform can charge different prices or not, the courts would be required to assess the competitive constraints that the platform faces on both the sides. This exercise of assessing competitive constraints in multi-sided markets has been examined in the section below.

Part - II – Assessing competitive constraints in multi-sided markets

While indirect network effects is an important consideration to define relevant market in multi-sided platforms, market definition, traditionally, is based on three main competitive constraints: demand substitutability i.e., customers' ability and willingness to substitute away from one product to another; supply substitutability i.e., supplier's ability to switch production to the relevant products and market them in the short term and potential competition (EU Commission Notice 1997; US DOJ and FTC 2010). While examining these competitive constraints can be complicated even in traditional markets, application of these factors is much more complex for multi-sided platforms due to different possibilities of substitution on both

the sides. This section discusses some of the difficulties that may arise while assessing these competitive constraints in multi-sided markets.

Non-transaction platforms may face very different competitive constraints on each side of the market, whereas transaction platforms are said to compete with other two-sided markets (UK CMA 2017). However, even in a single market approach, there may be different views of substitution for different user groups. In the case of *BKartA – HRS Hotel* (B9-66/10), the Bundeskartellamt held that hotel’s own website was not substitutable with online hotel booking portals as such platforms provide bundle of services such as “search, comparison and booking” which is not provided by the hotel’s websites. It was held that even where hotel customers consider a certain degree of substitution to exist between the various channels, hotels might have a different perspective. From their point of view, specific channels may not be substitutes but complement one another, for instance, offline sales such as through telephones etc. might be complementing hotel’s own websites and not act as a substitute (*BKartA – HRS Hotel* (B9-66/10), para 72, 73). Further, assessing competitive constraints in a single market might lead to an incomplete view of competition since competitive conditions may differ on the different sides of a platform as different sets of suppliers may be competing to serve users (Katz and Sallet 2018, 2155). For instance, both Facebook and Google may be competing with each other for advertisers, however, they may not be competing for each other’s users.

An important test traditionally used to determine the relevant market based on substitutability is the hypothetical monopolist or the SSNIP test (Small but significant non-transitory increase in price) which asks if a profit-maximising firm, that was the only present and future seller of those products (“hypothetical monopolist”) would be able to impose a small but significant and non-transitory increase in price on at least one of its products. (US DOJ and

FTC 2010). Applying SSNIP test in multi-sided markets requires significant modifications to be taken into account shifting demands from the indirect network effects that might arise. (Filistrucchi 2017). For instance, if the SSNIP test is applied on one side alone and ignores the other side, it does not consider that the price increase on one side will reduce customers available to the other side, which thereby reduces the prices that the other side is willing to pay (Evans and Noel 2008). This connection between both the sides reduces the profitability of an increase in price. For this reason, it has been suggested that in a two-sided market, both the sides of the market should be considered due to the indirect network effects even if the test is to be applied on one side only irrespective of the transaction and non-transaction differentiation (Niels 2019). The SSNIP test should consider changes in profits on both sides of the market and should be implemented by first imposing a price rise on one side of the market then on the other side of the market, each time allowing the hypothetical monopolist to optimally adjust the price structure (Filistrucchi 2008). Therefore, to properly define a two-sided market, one must focus on how a SSNIP on one side of the market would affect demand on both sides of the market (Sidak and Willig 2016). The price increase may, however, not be same on both the sides. In such a case, the market definition will have to be interpreted on a case-to-case basis. For instance, if the price increase on one side of the market is more than 5-10% but is less on the other side, then it could be interpreted that the market should be defined as both sides of the platform, especially if the conduct in question affects both sides of the platform since the monopolist can impose higher price on one side. However, if the competition concern relates only to one side, then it may be the case that the other side may be facing competitive constraints due to the presence of other substitutes because of which the monopolist is unable to impose SSNIP on the other side (Niels and Ralston 2021).

It has been suggested that the SSNIP test can be applied even in zero-priced markets as providing free services on one side of the platform is also an optimal price setting exercise for two-sided markets. In such situations, it has been suggested that prices on both sides of the market should be taken into account or SSNDQ (small but significant and non-transitory decrease in quality) test can be applied on the free services side of the platform in a similar manner. While the workability of SSNDQ test in real market situations has been questioned based on the inherent difficulties of measuring quality based on subjective features, it has been stated that it can still provide competition authorities with informal guidance on the role of quality in a market. (OECD 2013)

Another point to consider while looking at substitutability is tipping of market to one or only a few providers. Tipping is a “winner-take-all” market situation (Rysman 2009). It has been defined as the tendency of one system to pull away from its rivals in popularity once it has gained an initial edge (Katz and Shapiro 1994). Tipping may be more likely to occur in multi-sided markets due to network effects. In assessing tipping, the authorities will consider whether or not customers would be willing to switch to another supplier based on the costs and benefits of switching. (UK CMA 2010)

For the purpose of examining tipping in a given market, a further assessment may be made regarding multi-homing. Multi-homing refers to the choice of a user to use more than one platform at the same time. Contrary to this is single homing, where the user relies on a single platform. Multi-homing can be between two platforms with either similar or different functionalities. One such example is social networks. Consumers may multi-home between social media sites with either similar functionalities such as Facebook and Instagram or different functionalities such as Facebook and LinkedIn.

Multi-homing may be available either on one side or on both sides of the platform (Armstrong 2006). Further, while options of multi-homing may be available on both sides, consumers of one side may choose to rely only on one platform. For instance, among all the search engines available to the users, they may prefer one platform the most e.g. Google. A high proportion of single-homing customers on one side of the platform may mean that the platform faces little direct competition when offering its services to customers on the other side, as the platform becomes the only way to access those customers (UK CMA 2017). While multi-homing has generally not been considered by the competition authorities while defining markets, it may still become a factor for such assessment. For instance, in the case of *Google Android* (Case AT. 40099), the European Commission defined the market as ‘market for Android app stores’ as it assumed that consumers are single homers as they make a choice of either using a device based on Apple’s or Android’s mobile operating system due to high costs that users of Android devices face when switching to another operating system (Franck and Peitz 2019).

In the case of *Travelport/Worldspan* (Case No COMP/M.4523 – Travelport/Worldspan, (C (2007)3938)), which dealt with the market of global distribution system (GDS) which provided information to travel agents and allowed them to make reservations related to airlines, car rental companies and hotels and the travel service providers provided data on their products. Therefore, GDS was a two-sided market with travel agents (“TAs”) on one side and travel service providers (“TSPs”) on the other side. While defining the market, the European Commission observed that while TSPs used to multi-home, the TAs generally tend to use single homing. The Commission observed that single-homing or multi-homing depends on numerous factors such as the degree of asymmetry in the network effects i.e., whether they arise on only

one or both sides of the platform, degree of differentiation and customer preferences. In this case, it was seen that multi-homing was preferable for the TSPs, since it was important for them to reach maximum TAs. However, since all TSPs were multi-homing, single homing became the most viable option for TAs. (*Travelport/Worldspan*, para 16) In this case, while the court dealt with the aspect of single homing and multi-homing while defining the market, however, it was not considered as a decisive factor for market definition. Therefore, multi-homing, as a factor to define the relevant market, has not been widely used by competition authorities, however, it still might be a factor which may be analysed by the authorities to determine the extent of tipping that might occur in a given market. The possibility of tipping of a market increases if consumers tend to single-home on both sides due to lack of platform differentiation (Collyer, Mullan and Timan 2017). Homing decisions of consumers becomes an important consideration since even if one side can multi-home, for instance, say the buyer's side, then there might not be an obligation on the sellers or service providers side to choose only the most advantageous platform (Cave 2019). However, it has also been suggested that tipping is not a permanent competitive advantage and that there might be certain situations in which the market may have more participants, in which case, tipping can be reversed (Evans and Schmalensee 2010). Hence, in order to ascertain the market definition in a market which may be tipping in favour of one or a few platforms, it is important to take into account the factors of multi-homing and switching costs to ascertain the substitutability between the products and services that the different platforms have to offer.

It can be understood that while there are certain factors that need to be taken into account while defining the market, there is no objective criterion to apply these factors to define platforms due to the different models of conducting business in the platform economy. Traditional factors for defining the market cannot be relied upon for platforms, especially when

new models of business are still evolving. This creates a requirement of defining the market on a case-by-case basis depending on the abovementioned factors such as the kind of externalities, demand-side and supply-side substitutability, the degree of multi-homing on either side or both sides of the platform, instead of compartmentalising platforms into categories.

Indian approach to two-sided markets

The CCI has had an opportunity to define the market for various kinds of two-sided and multi-sided platforms such as search engines, consumer communication apps, travel platforms etc. However, its decisional practice has largely relied on the language of section 2(t) read with 19(7) of the Competition Act, 2002 which uses the concept of substitutability determined by the characteristics, price and intended use of the product to define the relevant product market. This approach fails to consider the nuances of platform markets discussed above. This part of the paper analyses in detail some of the recent cases decided by the CCI on multi-sided markets.

Google

CCI's order in *Matrimony.com Ltd. and Consumer Unity and Trust Society vs. Google LLC* (Case Nos. 7 and 30 of 2012 (8 February 2018)) (hereinafter "Google Order") was one of the early cases in which the CCI examined a multi-sided market in some detail. Google was alleged to have abused its dominance by biasing search results, imposing unfair conditions on advertisers and entering into restrictive distribution and intermediation agreements (Google Order, 63). The CCI found Google guilty of certain abusive practices but also found that some of the allegations brought against Google did not constitute an abuse of dominance.

The CCI described Google's business model as bringing together internet users, content providers and advertisers in a multi-sided market. The CCI adopted Rochet and Tirole's definition of a multi-sided market as one where inter-related demand between different sides creates positive externalities that makes it possible to subsidise one side of the market by charging consumers on the other side. As the CCI described it, internet users who use the information provided on Google's search result page permit their information to be collected by Google. This allows Google to generate revenue by placing advertisements on the search results page. On the other hand, content providers like websites allow their content to appear on Google's search results page which enables Google to attract more users through greater content provision. As such, the CCI disagreed with Google that its search services were free and stated that the revenue earned through search-based advertisements subsidised the provision of search services to users on the other side of the platform. The greater the amount of data collected by the search engine - the more effective is the provision of advertisement services (Google Order, 16; 32-33).

The CCI defined two separate relevant markets in this case representing both sides of the platform. These were the markets for *online general web search services in India* and *online search advertising services in India*. The CCI agreed with the Director General (DG) that online general web search services were not substitutable with search advertising services "on account of wide variations in the mechanism for generation and display of results and also clicking behaviour." The DG stated that for content providers who were interested in getting user attention both services were complimentary but served different purposes depending on which side of the platform was considered. However, it is incorrect to approach defining the two sides of a platform as part of one market only when those sides are substitutable. This ignores the competitive constraints that each side exerts on the other due to indirect network

effects discussed in the preceding sections of this paper. As such they are separate but interdependent markets that should have been defined as such. The DG's reasoning of distinguishing markets based on the differing mechanisms of the two products is also analytically incomplete. The CCI acknowledged the interconnected nature of the different sides of Google's platform in other parts of the order including in its assessment of dominance where it noted, "the barriers in the online general web search market also effectively restrict entry into the search advertising market". In other words, despite being a non-transaction platform, a new entrant into the market might need to compete on both the sides of the platform in order to succeed. The informants seem to have missed this aspect of Google's business model when they supported the CCI's market definition by arguing that users of search services distinguish between general web search and search advertising (Google Order, 17-18; 25-26; 45). This argument is misplaced because users of the search engine do not demand search advertising services and as such are not consumers of that product although they may be affected by the advertisements that appear on their search results page. Google provides different products to the consumers on different sides of its platform and as such those products would be viewed differently by consumers on each side. Thus, as discussed in the above sections, the CCI should have acknowledged the interconnectedness between both sides of the platform in its market definition even if it defined the market separately for each side.

In addition, CCI's market definition was based on the following analysis: direct search functions that require typing the URL of a website on an internet browser was not substitutable with general web search and specialised web search services (search services on specific topics such as shopping or travel) were not substitutable with general web search services due to differences in characteristics, price and intended use. The DG also noted that online and offline advertising were not substitutable due to differences in access, costs of advertising and efficacy

and online search advertising and online non-search advertising were not substitutable as search advertising can target specific users so is used for different purposes and priced differently (Google Order, 18-20).

Market definition does not occur in isolation and is connected to the purpose for which markets are being defined. The allegations of abuse of dominance against Google were focused on a particular side of the market e.g. allegations of search bias affected the internet user side of the market and allegations of imposition of unfair conditions on advertisers focused on the advertising side of the market. Yet, Google's incentives and ability to act are more clearly examined when the market is considered from both the sides. For instance, as the dissent noted, it is natural for Google to tailor its product to increase its revenue, which is derived from advertisements and the collection of user data. Thus, to understand the design of Google's search results page it is essential to understand Google's advertisement services. On the other hand, advertisers are attracted to platforms with more users. Thus, potentially restrictive or unfair conditions placed on advertisers may be justified by the better quality of advertisement services generated through Google's large user base. Thus, defining markets in a way that acknowledges the interconnectedness of both sides is helpful when examining the incentives and abilities of a platform to compete.

In two subsequent cases against Google, the CCI has given *prima facie* orders to further investigate Google's conduct involving its Android mobile operating system and its payments interface called Google Pay. The cases are *respectively Umar Javeed and others vs. Google LLC and others* (Case No. 39 of 2018 (16 April 2019), (hereinafter "Google Android") and *XYZ vs. Alphabet Inc. and others* (Case No. 7 of 2020 (9 November 2020)), (hereinafter "Google Payments"). In the Google Android case, the allegations against Google were that it

abused its dominant position by tying its apps and services on Android devices, mandating phone manufacturers to install all Google apps in order to get access to any of Google's products and preventing the development of Android 'forks'. In the Google Payments case, the allegations were that Google used its control over Google Play and Android to favour its payment app over competing payment apps, charging high commission for in app purchases, forcing users to use Google Pay for app purchases, among others. (Google Payments, 4; 22-23)

These cases are discussed together in this paper because of the overlaps in the market definitions used in both cases. The markets common to both cases were: (i) *the market for licensable mobile operating systems for smart mobile devices*, (ii) *market for App stores for Android OS* and the additional market in the payments case was *the market for apps facilitating payment through the Unified Payments Interface* (Google Payments, 16-17). In the Google Android case the CCI also noted that it would consider each Google application such as online video hosting platforms to be in a separate product market (Google Android, 10).

With respect to the market for licensable mobile operating systems, the CCI did not discuss the two-sided nature of these markets but noted that the market was defined from the perspective of phone manufacturers as non-licensable mobile phone operating systems were not available to other phone manufacturers (Google Payments, 18). The CCI's market definition followed the market definition in the European Commission's *Google Android* case (Case AT. 40099). That order was criticised for defining the market too narrowly and not considering the substitutability between different mobile operating systems downstream from the perspective of consumers who buy smart phones. Some scholars argued that Apple's operating system should not have been excluded from this market as it is Android's closest

competitor (Portuese 2019). The CCI should have provided some reasons for why its market definition did not consider potential constraints to Android from other operating systems due to consumer buying habits. As discussed above, homing decisions based on consumer preferences can become an important factor in defining the market which could have been considered by the CCI in this case. In particular, in *Shri Sonam Sharma vs. Apple Inc* (Case No. 24 of 2011), the CCI held that iPhones were ‘reasonably interchangeable’ with other phones and considered them to be a part of a broader market for smart phones in India.

In the subsequent Google Pay order, the CCI interestingly acknowledged in its market definition that network effects and size of the Android operating system limited the freedom of mobile phone manufacturers to choose alternative operating systems (Google Payments, 18). The CCI’s reasoning suggests that once markets tip in favour of a player, market definition may need to take into account the impact of network effects in limiting the substitutability between different products or services. The CCI’s reasoning also points to indirect network effects arising from the multi-sided nature of Android that caters to mobile phone manufacturers, app developers and consumers on each side of its platform. There are bilateral indirect network effects on Android’s platform as consumers value mobile operating systems which have more apps and app developers will develop their apps for operating systems with more users. Similarly, mobile phone manufacturers will install an operating system which is more attractive to consumers i.e., for which there are more apps. Mobile operating systems provide a base system on which applications can be developed. App stores are a way of accessing these apps and are an important component of Android’s monetisation. The allegations of abuse of dominance against Android require understanding the different sides of the Android platform.

With respect to the market for app stores, the CCI again did not acknowledge the two-sided nature of the market. An app store connects users of smart phones with app developers and sellers as they allow users to view, download and manage a large variety of apps. There are positive externalities between users and app developers on both sides of an app store as users value app stores where they have a choice of more apps and app developers value app stores that have a larger user base. App stores charge apps a fee which makes an app store a transaction platform. While apps can also be accessed in other ways such as through sideloading, file sharing and browsers, the CCI's *prima facie* view was that the substitutability of other means of accessing apps needed to be empirically verified (Google Payments, 18). Many apps can also be accessed through websites on a browser and thus the CCI should examine the substitutability of app stores and browsers more carefully.

E-commerce

In the e-commerce segment, the CCI's *prima facie* opinion in *All India Online Vendors Association vs. Flipkart India Pvt. Ltd & Flipkart Internet Pvt. Ltd.* (Case No. 20 of 2018) (hereinafter "Flipkart") was significant because it was the first order that acknowledged the importance of network effects in defining a relevant market. The allegation was that Flipkart Internet had abused its dominant position by engaging in deep discounting and leveraging its position to enter into the market for manufacturing private label products. Flipkart India was engaged in wholesaling of products that would ultimately be sold on Flipkart Internet's marketplace but by a different seller.

The CCI defined the market as '*Services provided by online marketplace platforms for selling goods in India*'. (Flipkart, 9) In previous orders the CCI had hesitated to delineate online

retailers as being in a separate market and had held in a number of orders that online sales were merely a different channel of distributing a product and that both mediums were substitutable with each other. However, in this order the CCI acknowledged that online stores or platforms had advantages for both sellers and buyers in terms of reduced costs of setting up a store etc. which distinguished them from brick-and-mortar stores. However, the most important aspect of this order from the perspective of this paper is that the CCI's market definition analysis distinguished between an online retail store and a marketplace platform such as Flipkart as the platform benefits from network effects that the store does not. It is for this reason that this order has been hailed in the literature. (Malik, Chakrabarti and Khan 2020)

Hotel Platforms

The CCI investigated two abuse of dominance cases and one merger case related to platform markets involving hotels. In *RKG Hospitalities Pvt. Ltd. v Oravel Stays Pvt. Ltd.* (Case No. 3 of 2019) (hereinafter "Oyo order") the CCI found no abuse of dominance in a *prima facie* opinion involving a company in the business of franchising budget hotels online under the brand name of 'Oyo'. Oyo is said to operate a two-sided platform that connects budget hotels with customers. Oyo has the maximum number of budget hotels on its network compared to its competitors in this segment. The case was brought to the CCI because it was alleged that Oyo had abused its dominance by imposing unfair and discriminatory conditions on a partner hotel (Oyo Order, 13; 18).

The informant argued the relevant market was the market for 'service providing budget hotels to customers through online bookings in India'. The question of market definition is difficult in this case because of Oyo's unique business model which makes it possible to

consider Oyo to be a platform, a hotel aggregator or a hotel chain. Oyo argued before the CCI that it should be viewed as a provider of hospitality services and not an aggregator, an online travel agency or a meta search engine. It is true that Oyo does not merely act as an intermediary or an aggregator. It enters into franchise agreements with partner hotels who take on the Oyo brand after incurring expenditure to standardise the look of the hotel. Hotel partners are also required to ensure that the hotel maintains a quality of service and facilities. Hotel partners are made to prominently display Oyo branding and as such appear as a part of Oyo (Oyo Order, 16; 19). Oyo agreed under the franchise agreements to guarantee minimum revenue to hotels and in return hotels were obligated to share revenue with or pay a commission to Oyo. Thus, Oyo acts on behalf of its partner hotels to ensure their bookings and acts on behalf of customers when they face problems with a hotel. For instance, hotels that customers complain against are removed from Oyo's platform.

The CCI defined the market in this case as the *market for franchising services for budget hotels in India*. The CCI acknowledged that the market under consideration was two-sided but felt that the market needed to be defined only from one side – i.e. the side of the hoteliers because the case arose from a complaint made by a partner hotel. The CCI did not engage in further analysis on market definition but while analysing whether Oyo was dominant admitted that this market definition could evolve as the market in question was at a nascent stage. (Oyo Order, 15-16; 20) While the CCI's opinion in this case was merely a *prima facie* one, there are many aspects of its market definition that needed further analysis. This became evident as the CCI progressed with its assessment of dominance and abuse in the order.

Firstly, the market defined by the CCI suggests that Oyo's platform is not substitutable with that of other hotel aggregators or online travel agents (OTAs) even though the CCI did

not examine this question when defining the market ((Oyo Order, 8). It clarified in its analysis of dominance that it did not view Oyo as a pure aggregator. This is in line with the CCI's opinion in *Make My Trip-Go Ibibo* (CCI Combination Registration No. C-2019/05/664 (20 August 2019)) (hereinafter "MMT-Go") where it disagreed with the parties' view that market definition should not segregate the different channels through which travel services are provided, namely travel agents, direct suppliers and online travel aggregators. The CCI's reasoning for defining these markets separately was that direct suppliers did not provide intermediation services or a platform for booking. The parties' arguments regarding ease of switching and similar characteristics and prices between different channels of booking were not accepted. (MMT-Go, 8)

The CCI's views in its analysis of dominance leaves room to consider that Oyo could be a part of a broader OTA market. The CCI noted that franchising of budget hotels was still in its early stages and budget hotels were weighing their options between listing on the network of an OTA or joining a hotel franchise (MMT-Go, 19-20).¹ This suggests that there is demand side substitutability for a hotel between listing with a franchise like Oyo or listing with an OTA. This can be compared with the *HRS Hotel* case decided by the Bundeskartellamt where it was held that even while hotel customers may consider various channels as substitutes, hotels might have a different perspective. For a hotel, the value provided by an OTA or a franchisor is similar to the extent that they facilitate greater access to consumers and more visibility through a platform. The CCI further noted that OTAs were moving away from a pure aggregator model and providing services to hotels that were similar to those provided by Oyo. The CCI's remarks

¹ Furthermore, the OTAs seem to be responding to the emergence of budget hotel franchisers with new and innovative means to provide better value to both partner hotels and consumers, in order to match the value addition provided by the franchisers. For instance, some OTAs have launched assured hotel services, which essentially involve lending of their respective brands to the budget hotels, thereby extending their role beyond just providing intermediation services for booking of hotel rooms.

may be a reference to a service called Assured Hotels launched by Make My Trip in 2017 to provide quality assurance to customers on certain hotels booked on their website (Chaturvedi 2017). This suggests that there is also potential supply side substitutability between the hotel franchising platforms and OTAs in terms of services that could be provided to hotels. Our analysis of subsequent CCI cases below reinforces the point that in defining platform markets it is imperative to first assess broad demand and supply side constraints operating in the market before looking at the features of the products or services involved.

Secondly, the CCI should have more carefully examined the relationship between both sides of Oyo's platform before defining the market from only one side. The analysis by CCI in this case could have been examined through the *US Airways Inc. v. Sabre Holdings Corp* case where while the District court held that the markets are separate because change in price on one side of the market does not affect the demand on the other side, the Second Circuit overturned this decision and held that both sides of the platform would be considered as a single market since the platform offers different products or services, to different groups of customers, whom the platform connects in simultaneous transactions and in cases involving two-sided transaction platforms, the relevant market must include both sides of the platform. (No. 17-960 (2d Cir. 2019)). The CCI's definition of the market suggested that it considered the relationship between hotels and franchisors as largely unconstrained by other factors. Yet, as the CCI's analysis of abuse showed, Oyo's actions are determined by a regard for the other side of the platform i.e., the consumer side. This is particularly because Oyo benefits more from indirect network effects i.e., that more consumers will be attracted to a platform with more hotels partners and hotels will prefer to use platforms with more consumers. The more consumers Oyo acquires the greater is its ability to leverage its position with hotel partners and impose conditions that may not align with the interests of hotels. In finding that Oyo had not abused

its dominance by imposing certain conditions in its contracts with hotels, the CCI noted that these clauses were justified because of the benefit to consumers from increased quality standards and improved performance (Oyo Order, 21-22).² Yet, given the nature of its market definition and the reasons given by the CCI for defining the market narrowly, surely the CCI should have given weight to the welfare consequences to hotel partners. It is noteworthy, that the CCI considered the welfare of consumers only and did not examine the potential welfare losses to hotels as purchasers of Oyo's franchising services. Specifically, the fact that hotels are required to make significant investments to join the Oyo network which might create barriers to entry and exit in this market and enable the exercise of market power once hotels enter Oyo's network.

The potential welfare losses to hotels from the imposition of quality standards becomes clearer when negative network externalities or hotel congestion is considered. For one, unlike the CCI's suggestion, it is not true that Oyo would always be constrained to act in the interest of hotel partners. Oyo could benefit from introducing more hotels on its platform, but this would not benefit its hotel partners as having a large number of Oyo branded hotels within close proximity to each other may reduce their revenue as they are unable to distinguish themselves from competitors because of the standardisation created by the Oyo brand. Moreover, Oyo may find other ways of earning revenue once it attracts a large customer base on its platform. These other channels may not involve hotels or provide revenue to them. Thus, when positive and negative, direct and indirect network effects on Oyo's platform is considered, the welfare implications of Oyo's unilateral imposition of clauses on hotel partners is more complex. A holistic market definition might have readily enabled this analysis.

² The clauses under consideration included performance-based incentive policies and scoring policies for hotels.

Subsequently the CCI investigated Oyo again along with Make My Trip (MMT) for abuse of dominance and entering into unlawful vertical agreements in the case of *Federation of Hotels and Restaurant Associations of India vs. Make My Trip Pvt. Ltd., Ibibo Group Private Limited and Oravel Stays Pvt. Ltd.* (Case No. 3 of 2019) (hereinafter “FHRAI”). In this case the CCI found a *prima facie* violation of competition law and has ordered further investigation. The allegations were that MMT-Go imposed price parity and room parity conditions on hotels, removed Treebo and Fabhotels (competitors of Oyo in the market for providing budget hotel franchising services) from MMT-Go’s platform for failure to pay arguably high commission rates (allegedly as part of an agreement with Oyo), MMT-Go gave Oyo preferential treatment on its platform, predatory pricing, charging excessive commissions and misrepresenting information to consumers.

Further to its previous decision in the Oyo case, the CCI defined the market separately for Oyo and MMT-Go and noted that Oyo was in the market for franchising services for budget hotels in India. For MMT-Go the CCI defined the market as the market for *online intermediation services for booking hotels in India*.³ Thus, the CCI felt that Oyo and MMT-Go were not part of the same market but were in a vertical relationship with each other as the CCI essentially described Oyo as a “budget hotel chain”. (FHRAI, 18; 23)

The CCI acknowledged again that the markets under consideration were two-sided with one side being consumers looking for hotels and the other side being hotels who use these platforms to sell rooms. The CCI did not recognise the indirect network effects on both sides of the platform. In line with its previous order, the CCI again noted that the market needed to

³ This market was defined more narrowly when compared to previous cases where the CCI had considered MMT to be part of a broader market of travel and travel related services.

be defined from one side only – i.e. hotels as the complaint was with regard to the treatment of hotels by these platforms. From the perspective of the hotels, the CCI noted that different channels of bookings such as direct bookings, booking through offline and online travel agents were all used simultaneously rather than as substitutes. The CCI used the SSNIP test to reinforce this point and stated that an increase in commission by OTAs would not cause hoteliers to shift to other booking channels. (FHRAI, 13; 17-18) The CCI did not indicate that the SSNIP test was conducted based on any data or provide any clarity as to how it was conducted to reach such a conclusion. As noted in the above sections of this paper, the CCI should have also considered both sides of the market in performing the SSNIP test. The CCI did not also acknowledge the impact on profitability of a price increase in platforms benefiting from indirect network effects. The CCI then noted that OTAs provided unique services to consumers that make them “characteristically different”⁴ from offline travel agents. Interestingly, the services that the CCI listed as making OTAs different from offline agents are also provided by Oyo on its website. Also, noteworthy here is CCI’s familiar pattern of shifting analysis from the hotel side to the consumer side of the platform to consider the characteristic of the platform despite the fact that market definition was limited to the hotel side. This highlights why defining markets from only one side can create analytical inconsistencies and prevent considering constraints that might operate on the other side of the platform.

The classification of Oyo as a budget hotel chain and the CCI’s narrow view of MMT-Go and Oyo as merely vertically related is mistaken for the reasons discussed in the analysis of the Oyo order. Given the sheer number of hotels on Oyo’s network, it is simplistic to think of Oyo as a hotel chain. This ignores Oyo’s motivations to bring more hotels on its network i.e., indirect network effects. In fact, the CCI’s characterisation of Oyo and MMT-Go as

⁴ The characteristics mentioned were search services, ability to compare and book at the same place.

connecting the same set of market participants i.e., hotels using these platforms to sell rooms and consumers searching for hotels on these platforms makes it evident that the question of substitutability between both businesses needs further examination as both meet similar needs in similar ways on both sides of their platform. By considering the needs of the market participants which provided a business opportunity to both Oyo and MMT-Go through their platforms, it is intuitive that Oyo and MMT-Go should be defined in the same market.

Consumer Communication Apps

The CCI's opinion in Facebook's acquisition of a 9.99% share in Jio Platforms Limited (Reliance Jio) and the attendant agreement between the parties to use WhatsApp as a channel for Reliance's e-commerce platform called JioMart (Combination Registration No. C-2020/06/747 (24 June 2020)) (hereinafter "Jio Order") raises some interesting issues on market definition. Facebook owns a number of companies including WhatsApp that operate in the markets of social networking, consumer communication and advertising. Jio Platforms operates a number of different digital products and services and is a provider of telecom services. The CCI identified that the primary markets in which the parties overlapped were those of consumer communication apps and advertising services. In addition, the CCI identified as potential areas of concern the agreement for WhatsApp and WhatsApp Pay to be used as a channel of communication for JioMart and whether the deal would create incentives for the parties to discriminate against certain competitors. (Jio Order, 4)

The CCI first examined competition overlaps between WhatsApp, Facebook Messenger and Jio Chat and described all three products as "consumer communication applications". In analysing how to define this market, the CCI also referred to its previous order

in *Shri Vinod Kumar Gupta vs. WhatsApp Inc.* (Case No. 99 of 2016) where the market was defined as *the market for instant messaging services using consumer communications apps through smart phones in India*. While the CCI did not expressly define a market in this case, it did make some interesting comments on market definition. For instance, the CCI noted that there was no need to segment consumer communication apps based on slightly different functionalities in the product offerings of companies. The CCI observed that with time this market had converged towards offering a standard set of functionalities that enabled interactions between users or groups through instant messaging, voice calls and video calls. In particular, the CCI noted that, “a realistic competition assessment should factor-in the stage of evolution and convergence in the industry and identify players who are competing with similar focus and incentives.” In other words, the CCI reasoned that as markets evolve businesses that were not offering certain products or services may end up adding those products or services to their offerings to meet demand, innovate and compete. Thus, it may be too narrow to define markets separately based on differences in some functionalities when parties are focussed on meeting demand of a similar type and are participating in dynamic and competitive markets. The CCI used the example of Skype and WhatsApp to illustrate its point and stated, “Skype and WhatsApp might not have been perceived as competitors initially, but both of their applications today have similar functionalities.” (Jio Order, 6; 8; 10) The CCI made a similar observation regarding digital markets converging in its recently published market study on the telecom sector in India. This is the kind of reasoning that the CCI should have undertaken in the Oyo and MMT-Go cases as well to find that Oyo and MMT-Go operate in the same market. In view of likely convergence, when platform markets are being defined, it is helpful to consider the broader picture in terms of the nature of demand that is being satisfied by different players because players are always adding functionalities to their product offerings to compete more effectively in markets.

Unlike in the Oyo and MMT-Go cases, in this case the CCI did not even acknowledge the two-sided nature of the market in which WhatsApp and Jio operate. This is relevant because an essential aspect of this deal is to allow JioMart access to WhatsApp's platform which can facilitate a connection between *kirana* or 'mom and pop' sellers and a large number of buyers (Jio Order, 18-19). Businesses are attracted by the large number of active users on WhatsApp, which create indirect network effects that WhatsApp can monetise. WhatsApp is already being used by businesses to reach consumers. This allows WhatsApp to continue to provide free services to users while charging businesses who want access to the larger user base on WhatsApp. This makes WhatsApp more than just a consumer communication app but a platform that allows buyers and sellers to connect. Moreover, in its market study on the telecom sector in India, the CCI described telecom players like Jio as platforms that connect consumers with 'over the top' (OTT) service providers (CCI, 2021). Such a view of the market was also missing in this case.

In fact, the parties argued that rather than consumer communication apps, the market should be defined as the 'market for user attention' which would be a two-sided market. The parties' argument was that their products competed with a number of others for the attention of users or time spent on using the app. This would bring social networking, messaging, gaming, content viewing and sharing, music and other products within a single market. (Jio Order , 6) Defining the market as an attention market would enable a consideration of both sides of the market as advertisers pay for user attention and ensuring user engagement over longer periods is an important goal of product design in two sided digital markets. The significance of user attention or 'eyeballs' were recognised by the CCI in its Google order where it considered that user attention and data was the indirect 'consideration' for the

provision of search services as they attracted advertisers (Google Order, 16; 30). Many scholars have argued that for non-transaction platforms like Google and potentially WhatsApp where benefits of interacting are on one side of the platform, market definition should consider ‘attention’ as the currency for the side of the platform that is free or subsidised (Wu 2019; Evans 2013).

While consumer communication apps have not so far monetised their services through advertisements, the long number of hours that users spend on these apps make them ripe for monetisation through advertisements or as a channel for ecommerce. This is also why ‘monthly average users’ is considered an important metric of market share in these markets and was used to measure market share in this case. The CCI dismissed the parties’ arguments on the ground that the purpose of these apps was to facilitate interactions between individuals or groups (Jio Order, 6). Defining the market as the market for user attention may result in an overly broad market definition, yet the CCI could have given more consideration to these arguments as they are supported by growing scholarly opinion and would have allowed the CCI to assess competitive constraints more holistically.

Conclusion

Market definition is a critical part of a competitive effects analysis, particularly in case of abuse of dominance. A number of factors make market definition in platform markets more complicated. These include indirect network effects, difficulty in assessing substitutability and different competitive constraints operating on each side of a multi-sided platform. Traditional tools of market definition like the SSNIP test cannot be blindly applied to platforms. An extensive amount of academic literature has addressed how to define platform markets. Some

suggest defining a platform from one or both sides of the market depending on whether it is a transaction or non-transaction platform. Others caution against using general rules and using a platform-specific approach to assessing how each market should be defined.

This paper examined the CCI's decisional practice in defining multi-sided platform markets. The CCI did not even acknowledge in some cases that the markets it was defining were multi-sided. Further, even when markets were recognised as multi-sided, the CCI only defined the market from one side without any analysis of price or output constraints posed by the other side or indirect network effects. This contradicts the position of the US Supreme court in *Ohio v Amex*. It has also limited the kind of arguments that the CCI has accepted from parties. This resulted in the CCI not appreciating the constraints operating on Oyo and MMT-Go from each other as well as the nature of WhatsApp's and Android's business model. This is not to suggest that the CCI should define every platform market from both sides but that the CCI should explore the implications of such a definition.

The CCI did not also undertake to assess the business model adopted by a platform e.g. whether it is a transaction or non-transaction platform. This prevented the CCI from properly appreciating the costs and benefits faced by each market participant connected to a platform. In defining platform markets, the CCI may do well to move away from its traditional focus on the characteristics of the products or services being provided and consider the nature of the demand being satisfied by a platform. The limited nature of CCI's market definition has also led to inconsistencies in its analysis of dominance and abuse. For instance, in some cases where a market was defined from only one side, the CCI's analysis of dominance and abuse also involved the other side of the platform, essentially overlooking the boundaries of the market determined by it earlier. There is however, some reason for hope. The CCI has noted the

challenges of market definition in platform markets in its recently published market study on the telecom sector in India. The study acknowledges the interdependencies between the different sides of platform markets and the need to adopt new tools for these markets. The significance of this study will depend upon the CCI's enforcement practices. It is time for the CCI to take the multi-sided nature of platforms into account if it wants to fully appreciate the ways in which business is conducted in today's markets.

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