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Regulatory Challenges Arising from Emerging Hybrid Business Models in Retail Sector: Insights from India[(i)]

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ABSTRACT

This paper focuses on the emerging relationship between the new-age organised players and traditional retailers through the hybrid business models in India. The former connects the latter to consumers through both e-commerce and offline channels. The concern is the hegemonic tendency of the organised players to control the relationship. Based on the Competition Commission of India's cases against the Indian e-commerce players, this paper highlights the unfair trading practices of new-age organised players in dictating contractual terms, exclusive promotion of their products and preferred vendors, creating entry barriers, and control over consumer preference data. Furthermore, this paper discusses the lacunae in the current competition legal framework, which fails to take cognizance of the anti-competitive behaviour of the existing organised players. Finally, it suggests that competition laws should ex-ante discourage potential anti-competitive behaviour rather than ex-post action.

JEL Codes: *K21, L14, L42, L81, L86*

KEYWORDS: *Competition Commission of India, Competition Policy, E-commerce, Hybrid Business Model, Retail Sector*

INTRODUCTION

The landscape of the Indian retail sector has seen remarkable changes in the last several decades. It changed from traditional small retail stores[1] (unorganised sector) to supermarkets and hypermarkets[2] to e-commerce in the organised sector. Several factors *viz,* urbanisation, increase in per capita income, increased women's participation in the workforce, favourable demographics, food safety and hygiene concerns, changes in consumer preferences and convenience have augmented the pace of organised retailing in India (Reardon *et al.,* 2004; Reardon and Berdegue, 2002). Furthermore, technological advancements, rapid diffusion of smartphones, internet facilities, online payment gateways and big data applications have facilitated omni-channels, where operations happen offline and online mediums (Desai *et al.,* 2017).

Organised retail has established itself as the main channel of retailing in developed countries. Contrarily, in developing countries, the majority of the population still depends on traditional retailers (TRs), which play a central role. The growth of the e-commerce players, however, has been rapid, owing to the low requirement of real estate infrastructure and cost-effective last-mile delivery underpinned by cheap labour (Kuijpers and Simmons, 2019; He *et al.*, 2018). Furthermore, hybrid business models are at the fore in China and India, which intends to integrate TRs into the organised sector by providing digital payment infrastructure while simultaneously using the physical infrastructure of TRs to fulfil their online orders and deliveries (Antony and Sanjai, 2020; Paul, 2021). Notably, in India, the launch of hybrid business models and mergers or acquisitions of small organised retailers (ORs) by their bigger counterparts is burgeoning.[3] These new developments further reinforce the amalgamation of offline and online retailing with upstream and downstream supply links.

(i) The views expressed in the paper are those of the authors and not of the institutions they are associated with.

1 The traditional retailers are small pop and mom, brick and mortar and vendors that are majorly unorganised sector players and are mostly small-scale family-run businesses.

2 Supermarkets are a large or small self-service shops selling food and non-food household goods. Hypermarkets are large supermarkets selling a wide variety of FMCG. Both supermarkets and hypermarkets come under organised retailing.

3 Reliance group (through its two subsidiaries – Jio Platforms and Reliance Retails) announced its plan to expand its retail business using the e-commerce route through a hybrid business model, combines its own retail outlets and the other off-line small retailers on its platform to connect with the end-customers, by using the WhatsApp and JioMart mobile apps.

Network externalities characterise the hybrid business models or multisided platform markets and have existed in several forms, from village markets in the olden days to shopping malls in modern times. Nevertheless, hybrid business models made possible by technological advancement and digitization bring an unbalanced relationship between unequal partners, *i.e.* large, deep-pocketed and powerful ORs and widely distributed TRs holding a fragmented voice. However, this imbalanced relationship is not new in the Indian case, as it already exists between the e-commerce platforms like Amazon and Flipkart and their sellers. The unique feature of these models, shaped exclusively by the big domestic ORs is that they can engage TRs in multiple interlinked businesses. Given the fragmented bargaining power of TRs, they may be subject to intensified anti-competitive trade practices. Furthermore, the ORs have various avenues to recoup losses incurred during the early years of operation or in one line of business from another.

Globally, there is a spurt in anti-competition cases involving digital platforms and technology firms in developed and developing countries (UNCTAD, 2021). Network externalities, big data, and algorithmic matching contribute to concentrated market structures and monopolistic tendencies in the wave of multisided platform markets. There is an increased recognition that the competition laws in their current form, conditional on a conventional outcome-based approach, *i.e.* distortion to prices and consumer welfare, overlooks the process and market structure that facilitates market power. Moreover, it draws attention to anti-competitive practices only after the firm has gained adequate market dominance. The consumer welfare determined by an increase in prices or fall in output has failed to recognise the anti-competitive behaviour of firms in the digital age. Since there are several channels and sophisticated strategies through which firms can recoup their losses. Notably, control over data enables customised services, implementation of price discrimination and rapid changes in product prices several times a day (Khan, 2017). Therefore, the competition laws should ensure conditions that discourage potential anti-competitive behaviour and market dominance by refocusing on the process and market structure.

Against the backdrop, this paper examines the Competition Commission of India's (CCI) judicial cases against existing e-commerce players to understand the entrenched anti-competitive practices. Furthermore, this study highlights the possible effects on TRs and the market structure of the retail space by taking a cue from the relationship between the e-commerce players and their sellers in India and developed countries. Finally, the paper contributes to the literature to elucidate the potential abuse of market dominance by the emerging large domestic ORs in the hybrid model space and ill-equipped competition laws to recognise the same.

The paper's organisation is as follows: first, the study dives into the global experience of retail sector evolution through a literature review in Section 2. Section 3 explores the emerging challenges and issues in the retail sector. Section 4 throws light on the journey of the Indian retail sector. Section 5 illustrates the potential impact of these developments on the market structure. Section 6 discusses the implications of the possible market structure and its ramifications for the policy formulations, followed by the conclusion in Section 7.

LITERATURE REVIEW

Global story: The spread of organised retail and e-retailers

A century ago supermarkets first evolved in the US between 1920 and 1930 and became dominant in the 1950s. Gradually, it moved to industrialised countries in Central and South America, Europe and Australia. Between the 1990s and 2000s, the liberalisation of FDI in developing countries drove the diffusion of supermarkets (Reardon *et al.,* 2012). Empirical narratives describe the evolutionary progress of organised retail as phases of innovation (Desai *et al.*, 2017; Lu and Reardon, 2018). Initially, the traditional neighbourhood retail stores dominated the retail sector, which turned into self-service supermarkets.

The next innovation in the sector was the emergence of giant hypermarkets. For instance, Walmart in US and Carrefour in France brought numerous products under the same roof, creating greater choice and value for money. This was possible due to economies of scale, and effective supply chain management practices, which increased efficiency and cost management. Furthermore, with the growth of the hypermarkets, the procurement system was globalised to reduce costs and ensure a reliable supply of products resulting in innovative centralised procurement and distribution centres. Alongside, there were other far-reaching developments in the retail sector, such as the introduction of private labelled products, loyalty cards, weekly discounts, digital payment facilities, bulk buying options, self-checkouts and other services (eating joints and salons).

Subsequently, with the deepening of internet penetration and online payment gateways, e-retailers have emerged and expanded. In addition, e-retailing is reshaping the face of retail with technological innovations and network externalities by stepping up investment in logistics, innovation in last-mile delivery options, expediting organised retail penetration and expanding consumer base.

New forms of businesses: Omni-channels to Hybrid models

The new retail formats omni-channels have gained momentum, switching from exclusive offline or online formats to both. The e-retailers are aggressively offering multiple channels like online orders with home delivery and pay-and-pick service. On the other hand, physical outlets provide a drive-through and complete shopping experience at the stores. China is leading the new omni-channel retail wave ahead of the rest of the world. The dominant mobile payment technology providers and retailers in China, Alibaba and JD.com, have played a key role in developing data-driven innovative applications. Several small traditional retailers are now revamping themselves as order-and-delivery stations for big e-retailers with food delivery platforms. Under Tmall and JD.com, the shelves of conventional shops are replenished by stock through a smartphone application (He *et al.*, 2018).

ISSUES AND CHALLENGES OF NEW BUSINESS MODELS

The growth of organised retailing has brought many advantages, but not without challenges. Over the years, the big players' consolidation, dominance and uncompetitive practices have been matters of concern. These issues have long-term implications for regulatory and institutional development.

Process of consolidation

The successful big retailers acquired several small retailers and the rest could not sustain due to high competition. The US had anti-supermarket regulations and competition laws restricting market concentration between the 1930s and 1980s. The UK had laxer regulations leading to higher concentration among the top few players (Reardon and Gulati, 2008; Wrigley and Lowe, 2014). With the reversal in the regulations, concentration among the US supermarkets caught up with the UK since the 1980s. The top four-five supermarkets held over 50 per cent share (Lina *et al.*, 2009). Likewise, in Australia, the leading two supermarkets, Coles and Woolworths acquired 80 per cent of the market share, while another independent supermarket, IGA, accounted for 16 per cent in 2009. The market concentration of grocery retailers in six countries of Central Europe - Austria, Czech Republic, Germany, Hungary, Poland and Slovakia measured by CR-4 and Herfindahl-Hirschman Index shows a character of asymmetric oligopoly, dominated by top three or four firms during 2010 to 2015 (Spicka, 2016).

Dominance of multinational companies (MNCs) in organised retailing

Global retailers expand their investment and operations in emerging markets when their home country markets saturate. The most cited examples are Latin American countries' experience (Reardon and Gulati, 2008). When these countries opened the economies for FDI in retail, many MNCs entered the market, and the top five owned nearly 70-80 per cent of the stakes. The FDI flows to developing countries have remained one of the critical supply-side drivers of the rapid diffusion of supermarkets. Other countries, like Indonesia, the Philippines, and Thailand, allowed FDI in retail at a much later stage, in 1998, 2000, and 2005, respectively. Few multinationals, such as Carrefour, Walmart and Tesco, have dominated this transformation within developing countries (Reardon Berdegué, 2002).

Unequal relationship between traditional or smaller players and organised bigger players

Empirical narratives have observed two types of relationships between big and small players across countries. The first type is competitors, and the second is partners. For example, the expansion of Walmart in the US resulted in a 40-50 per cent decline in small discount stores. Similarly, small shops in India, especially in Mumbai, experienced lower sales due to the growing influence of shopping malls (Kalhan, 2007). With the diffusion of online retailers or big e-commerce players, technology-enabled price transparency has forced offline retailers to reduce prices to remain competitive(Kuijpers and Simmons, 2019).

Similarly, the empirical evidence on partnership between ORs and TRs shows adverse effects of the former on the latter. For instance, the Tesco chain in the UK paid its suppliers four per cent below the average price paid by other retailers with the increase in their market share (Stichele *et al.*, 2006). Often supermarkets limit the number of suppliers to control over produce quality, reduce transaction costs and side selling behaviour of the suppliers (Singh, 2010; Chen *et al.*, 2005).

INDIAN RETAIL SECTOR JOURNEY SO FAR

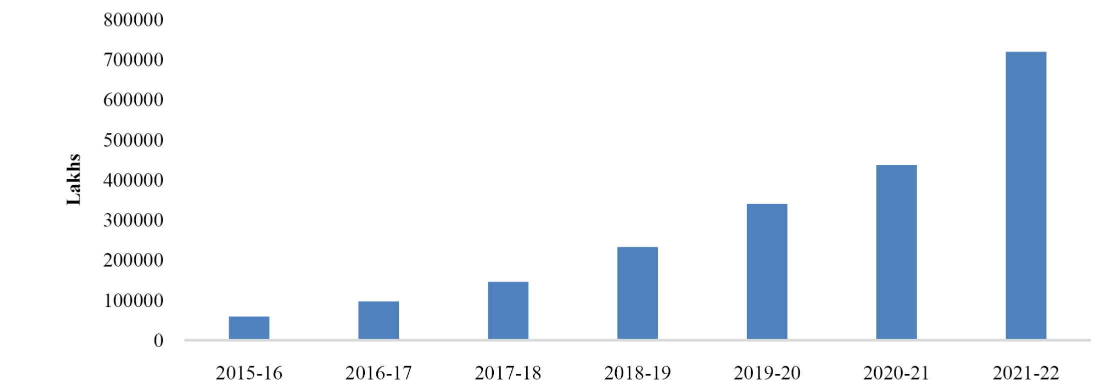
Indian retail sector has been markedly a curious case – with the world's highest per capita retail shops, lowest retail area per person and low retail productivity compared to other major economies. In terms of market structure, the retail market is dominated by the unorganised sector, employs around eight per cent of the working population and contributes over 10 per cent to the country's GDP (IBEF, 2021). The Indian retail market is growing at over nine per cent annually. It is likely to become the third-largest consumer economy in the world by 2025, having a net worth of around USD 1.1 to 1.3 trillion (Singhi *et al.*, 2020).

The presence of organised retailing was almost negligible until the mid-1990s, and gradually big domestic ORs started their operations post-economic liberalization. The journey of organised retailing in the last three decades (1991-2020) is quite bumpy and intriguing so is the evolution of the policies and regulations around it. The first decade (1991-2000) witnessed the entry of domestic multi-brand self-service supermarkets serving a niche market in urban centres (Reardon *et al.*, 2012). With the liberalisation of 100 per cent FDI in wholesale cash and carry and 51 per cent in the single brand in 2006, the decade from 2000 to 2010 saw a remarkable increase in FDI inflows. Simultaneously, domestic firms invested in hypermarket formats and convenience stores. In 2012, further relaxation in FDI in retail was introduced. Under this, foreign firms were allowed to own a maximum of 51 per cent stake and 100 per cent in the multi-brand and single-brand segments, respectively. Nevertheless, some rules and regulations were implemented to moderate the growth of global players (DIPP, 2015).

Unlike several developing countries, Indian organised retail sector growth was fuelled by domestic investments. As a result, the operations of domestic ORs varied distinctly. For instance, some are confined to specific regions, some fast penetrated tier 2 or 3 cities, and few have emerged as national chains. In comparison, few others have shifted their business focus from tier-1 cities to smaller cities and towns. Regarding shop formats, few expanded from supermarkets to hypermarkets, few scaled down from supermarkets to convenience stores, and few implemented pick-up stores (Reardon et al., 2012). These operational changes of ORs can be attributed to multiple impediments they faced in terms of logistics, infrastructure bottlenecks and a high rental price to secure floor space in prime locations. The retail space available to Indian retailers is way lower than their counterparts in developed countries (Kohli and Bhagwati, 2011).

In the last decade, from 2010-20, the organised retail space witnessed the entry of domestic e-commerce companies such as Flipkart and Snapdeal, followed by the entry of Amazon in 2012 through the FDI route. The number of online shoppers jumped from 20 million in 2013 to 60 million in 2016 and is expected to reach 220 million in 2020 (Deloitte and RAI, 2018). Similarly, India's total digital transactions increased by 12 times between 2015-16 and 2021-22 (Figure I).

Figure I. Digital Payments (Volume)

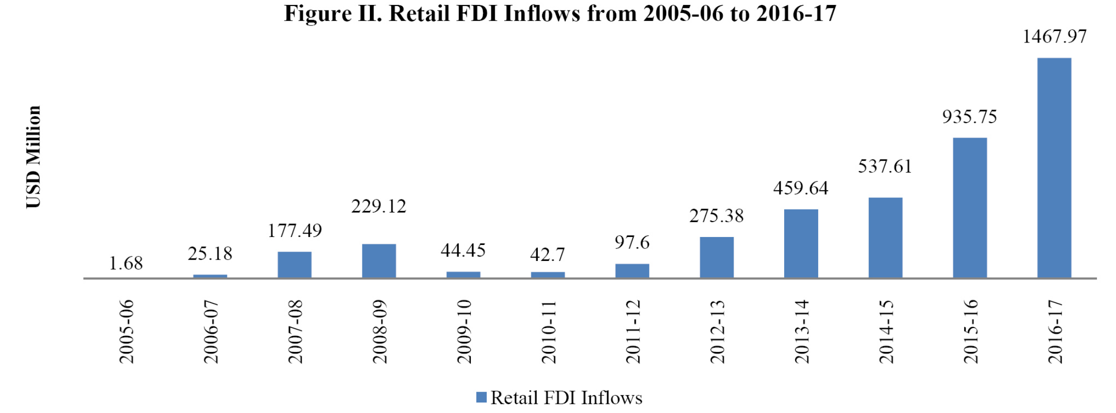


Notes: Digital transactions include RTGS (only customer initiated), NEFT, IMPS, Cards (credit cards, debit cards, prepaid cards), Mobile wallet and mobile banking.

Source: Reserve Bank of India

India has a different set of regulations for online and offline retail space. The online retail is categorised based on marketplace and inventory models. In 2016, the government approved 100 per cent FDI in the marketplace e-commerce and 100 per cent FDI was allowed in multi-brand processed food retailing with products to be sourced and manufactured domestically. Additionally in 2017, the government announced that global retailers could source for export and international operations, resulting in substantial capital inflow in recent years (Figure II).

Figure II. Retail FDI Inflows from 2005-06 to 2016-17



Source: Lama (2019)

Recently, the e-retailers are witnessing tremendous growth wherein many existing big ORs, particularly Reliance, Tata and Walmart, are expanding their footprints through hybrid models.The renewed focus has been because of policy reforms to ease business operations. Hence, investments through mergers, acquisitions and innovative business models are increasing. Before the emergence of ORs in the hybrid model space, e-commerce and its amalgamation with other stakeholders was gradual, now, the incumbent players have sped up their efforts to capture the market share in the new business environment by first mover advantage. Notably, the market share based on retail sales for top Indian retailers shows that the top three retailers held more than 90 per cent share in 2021-22 (Table 1). The market share in retail sales of Reliance Retail Ltd has increased significantly over the last decade. Indian e-commerce journey is just a decade old but has already invoked several concerns for the regulators.

Table1. Market share of top organized retailers in India

Retailers	2010-11	2015-16	2019-20	2020-21	2021-22
Reliance Retail Ltd.	43.5	42.3	68.8	75.9	77.7
Avenue Supermarts Ltd. (D Mart)	24.7	20.8	14.0	13.9	13.9
Future Retail Ltd.	7.3	16.3	11.1	3.6	2.8
Wal-Mart India Pvt. Ltd.	0.0	7.7	2.5	2.7	2.2
More Retail Pvt. Ltd.	10.7	8.0	2.4	2.5	2.0
Trent Hypermarket Pvt. Ltd.	0.0	0.0	0.4	0.8	0.7
Metro Retail Pvt. Ltd.	4.3	1.9	0.4	0.4	0.3
Hypercity Retail (India) Ltd.	0.6	0.5	0.3	0.2	0.2

Source: CMIE

REGULATORY CONCERNS ABOUT NEW BUSINESS MODELS

The hybrid business models can potentially improve operational efficiencies in the retailing business. However, the core question is the distribution of benefits from efficiency gains among the stakeholders in the absence of effective competition laws to detect and deter anti-competitive practices. This section examines the cases filed with the CCI against the big e-commerce players for their alleged malpractices.

Analysis of Indian Competition Cases against E-commerce players

E-commerce sphere of the Indian retail sector has witnessed several policy changes. A handful of companies have established themselves as big players. Over the last decade, Flipkart and Amazon have established themselves as the two most prominent players, with a market share of 63 per cent in 2020 (Barkho, 2021). With their market dominance, these players have allegedly set exploitative terms and conditions for their partners, evident from the legal complaints filed with CCI. The contract design and operational tactics favour them and their associate entities (Walia, 2020).

Furthermore, predatory pricing[4], economies of scale and deep discounting facilitated by significant external investments have hurt competition. The detraction of a large market share in their favour has drawn substantial attention. This is evident from two major cases[5] filed against Flipkart and Amazon and a subsequent market study[6] conducted by CCI to understand the nature of market functioning and business strategies of e-commerce players. The salient features of the allegations are as follows.

Deep discounting and preferential treatment

The CCI has observed deep discounting leading to below-cost pricing by Flipkart and Amazon as a strategy to shun the competitive ability of TRs (CCI, 2018; 2019; 2020). Another alleged concern is that the platforms follow preferential treatment in terms of lower fees or extra discounts for a few sellers affiliated directly or indirectly with these market platforms *vis-à-vis* a high commission fee for the other independent sellers.

Exclusive tie-ups and biases in contracts

This remains another way to vitiate the competition with TRs. For instance, many mobile companies launched their products exclusively on these platforms before offering them to TRs or never reached the physical market. This allowed for high market power over the TRs through customized contract agreements. As alleged by the TRs, they were also subjected to unilateral revision or threat of termination of contracts by both platforms, reflecting the lower intensity of competition (CCI, 2019; 2020).

Information accessibility and private labels

Data is the fuel for this digital era. Market platforms collect several information, including customer preferences, search history, price sensitivity, demand and purchase patterns. The market platforms allegedly used this information to introduce their own improvised private labelled products in the niche categories and have made profits. Nonetheless, this is not legally permitted for foreign e-commerce players

4 Predatory pricing means below-cost pricing by some firms such that other firms cannot compete or forced to exit.

5 CCI Case details: 1) Case No. 20 of 2018: All India Online Vendors Association Vs Flipkart India Pvt. Ltd. and Flipkart Internet Pvt. Ltd.; 2) Case No. 40 of 2019: Delhi VyaparMahasangh Vs Flipkart Internet Private Limited& its affiliated entities and Amazon Seller Services Private Limited& its affiliated entities.

6 Competition Commission of India conducted a market study on e-commerce titled: 'Market Study on E-commerce in India: Key Findings and Observations'. It was released in January 2020.

in India, which is clear evidence of abuse of their dominant position.

Operational practices of market platforms for creating dominance over the vendors

Market platforms allegedly used opaque mechanisms to devise search rankings to dominate their sellers and influence market outcomes. The search ranking favours the private labels alongside the products of the preferential sellers while simultaneously creating a bias against the independent TRs through user reviews and rating policies (CCI, 2020). Another allegation on the market platforms has been the bundling of services and biased discount schemes forced upon them. Additionally, market platforms have tried to push for high commission rates and penalties during subsequent renewals varying across product categories to control the sellers.

Ramifications for Competition Regulation

In both cases CCI(2018; 2019), interestingly, CCI did not find any abuse of dominance owing to the absence of market power by any single market platform. Therefore, CCI dismissed the case against Flipkart (for 2018 case). However, it investigated alleged malpractices on both market platforms (for 2019 case).[7] The CCI recognized the prevalence of deep discounting, preferential treatment, biased search ranking and joint market concentration of Amazon and Flipkart. Nevertheless, CCI also acknowledged its legal limitations in acting against the alleged malpractices of Amazon and Flipkart.

The above-discussed CCI rulings exposed several lacunae in the Indian competition laws. Firstly, the Indian competition law prohibits abuse of dominance rather than deterring a dominant position by an entity. India amended its anti-monopoly law into competition law in 2002 by enacting the 'Competition Act 2002'. The focus of the former law was to restrict any entity from becoming a monopolist. In contrast, the latter's objective is to promote competition and limit any abuse of dominance.

Secondly, the current competition law does not allow CCI to probe into joint or collective dominance by more than one player. This restricted the scope of investigation against Flipkart and Amazon (CCI, 2019).

Point 15 of the CCI 2019 case ruling reads, "*The Commission notes that it is a settled position that the Act does not provide for inquiry into or investigation into the cases of joint/collective dominance as the same is not envisaged by the provisions of the Act. Therefore, the Commission need not deliberate further on allegations on account of joint dominance as the same being untenable under the Act*".

The Competition Act's Section 4 defines dominance of one entity in a relevant market if it can influence or operate independently of competitive forces. The lack of clarity in defining relevant market and dominance diluted the cases against Flipkart and Amazon.[8] Any abuse by joint dominance does not attract anti-trust inquiry or investigation. Therefore, the cases against duopoly or oligopoly are ruled out from the purview of the CCI investigation.

Thirdly, platforms show market dominance because of their control over extensive data on consumer preferences and purchase behaviour. Under the current competition laws, these factors are not acknowledged as an anti-competitive measure. Control over data offers cross-market dominance and discriminatory behaviour (Khan, 2016).

Lastly, Competition Act focuses on consumer welfare based on price competition, thus, overlooks the issue of predatory pricing and deep discounting. Though these practices benefit the consumers in the short run, this might eliminate the medium to long-run competition. These strategies indirectly help large enterprises to create entry barriers and reap economic profits. Indian competition policies and laws prohibit the abuse of a dominant position. However, they remain silent on achieving a dominant position, as evident from the CCI cases analysed.

Given the unfair trade practices of ORs, the Consumer Protection (e-commerce) rules 2020 has brought forth several amendments. These include equal treatment of all sellers without favouring the sale of products by their group companies, ban on flash sales, disclosure of the methodology of discounts and discouraging algorithms-induced bias against select products. Regarding the issue of algorithm-induced product suggestion, the amendment lack clarity on monitoring and ensuring accountability of the platforms.

DISCUSSION

In the Indian organised retail sector, several TRs partner with e-commerce players. Going ahead, they might become part of the hybrid business models of the ORs, driving the trend further. The hybrid business models would force competition on several fronts, including supply-chain management, online market platform, technological innovations, delivery infrastructure, and consumer-oriented discount schemes. By integrating producers, retailers and consumers through

7 However, Amazon was able to put it on hold through higher judicial court.

8 Similarly, in the case of Amazon's pricing of Kindle and e-books, the competition authority found 'persuasive evidence lacking' to establish predatory pricing due to losses made by overall e-books market while the sub-categories like bestsellers or new releases made huge profits. This was due to a lack of clarity in defining the relevant market (as e-books or bestseller e-books) and its comparison with physical books being sold led to non-establishment of predatory pricing by Amazon in the USA (Khan, 2017). Later, competition authorities of Egypt, Kenya, Peru and Turkey reported that defining relevant markets and dominance in digital markets are becoming challenging (UNCTAD, 2021).

backward and forward linkages, these innovative business models would require a massive scale of investment by the competitors, shaping entry barriers and future market structure. The possibility of unveiling an oligopoly market structure cannot be ruled out, where a few ORs enjoy a large market share.

The evidence of e-commerce players with foreign investment selling private labelled products has exposed the loopholes in the existing e-commerce policy and regulations (Bundhun, 2020; Kalra, 2021). Globally, major e-commerce players have followed similar anti-competitive practices. In US and UK, Amazon used the data of third-party sellers to introduce competitive products or price reductions with better placement on its platform, drastically hampering its partners' business (Khan, 2016; Mattioli, 2020). Alongside, Amazon is a 'tough negotiator' in the US and UK, imposing the shipment cost between the warehouses and obligating the suppliers to purchase more ads to remain preferred ones (Kim, 2017). The EU has initiated a probe into its preferential treatment and placement of products of select sellers in the Amazon Prime option (Amaro, 2020).

Unlike the foreign e-commerce firms, the Indian domestic ORs, through the hybrid business model, can operate in inventory and marketplace, provided it complies with the FDI regulations. This effectively places the domestic ORs (Reliance and TATA) at par with Amazon in the US and EU. Initially, the ORs would influence TRs to join the hybrid models by offering advantageous deals with low entry fees and access to digital payment infrastructure. Concurrently, the TRs would access a broader customer base, including exclusive online shoppers. However, the dependence of TRs on ORs should not encourage the latter's exploitation of former.

Simultaneously, the excessive promotion of private labelled products might hurt the manufacturers of primary products, in the long run, by influencing the nature and quality. This is a supply-side aspect, which may not get captured by distortion to outcomes like price and output, indicators of consumer welfare. Thus, the current competition laws lack mechanisms to capture the harm posed to suppliers while analysing the market competition. Furthermore, there could be possible discriminatory selection criteria for the TRs, as ORs intend to rely on the former's last-mile delivery infrastructure to reduce their delivery cost and inventory management.

Global evidence shows market dominance or concentration in several industries, for instance, seeds, agrochemicals, farm equipment, synthetic fertilizers, animal pharmaceuticals, food retail and distribution market and agriculture commodity trade (Deconinck, 2020; Hendrickson *et al*., 2020;Gura and Meienberg, 2013; Rawal and Navarro, 2019). However, the impacts are context-specific and vary across industries. The duopoly in the Australian retail market has been responsible for elevated prices (Lina *et al.,* 2009). Market concentration promoted the concentration of research and development to a handful of corporations, obstructing the entry of new players, impeding price competition and creating negative impacts on farmers, workers and consumers (lower output price) (Deconinck, 2021).

Globally, the challenge is the lack of regulatory and institutional apparatus to monitor the process through which the prominent players flout rules to establish dominance over the small players in the dynamic digital economy (Khan, 2016; UNCTAD, 2021). Given that the big players are strengthening their play, timely development of a comprehensive regulatory framework is imperative in the digital technology-intensive Indian retail space. If the system fails to do so, the large players might turn into giants, similar to technology companies.[9] In the future, for emerging economies like India, the competition laws should promote competitive markets with a renewed focus on the process and market structure to curb technology-driven retail monopolies or oligopolies rather than act when enough damage has already been caused to the outcome of the process.

CONCLUSION

This paper focuses on the emerging relationship between the new-age ORs and TRs through the hybrid business model, wherein the former would engage the latter to connect to customers through a hyper-delivery system. As highlighted by CCI cases, the existing unfair and biased practices of the ORs by increased use of private labelled products and preferential treatment of select sellers make the TRs vulnerable to exploitation. Moreover, the market dominance and entry barriers created by large domestic ORs would discourage small players from investing in technology and delivery infrastructure, resulting in the erosion of competitive market structure.

As a policy recommendation, Khan (2016) notes that e-commerce players should be banned from being competitors in the same marketplace they own. The Indian experience, however, shows that even this might be inadequate for the technology-enabled e-commerce firms to deter from engaging in anti-competitive measures. Globally, several countries have adopted new *ex-ante* rules for online platforms to address issues related to competition, data protection and consumer interests (UNCTAD, 2021).

The e-commerce regulations differ for domestic and foreign players, wherein the former is allowed for inventory format while the latter is restricted to the marketplace model. The domestic ORs with foreign funds are as empowered as the foreign players entering through the FDI route; hence only the latter would exploit the domestic TRs is misplaced. Going ahead, the competition policy should focus on the inter-connectedness of the business of the ORs and e-commerce

9 For instance, Google, Facebook, Apple and others have now become too big in the absence of effective regulation (due to barriers to entry).

players to deter the creation of entry barriers, an exclusive promotion of private labeled products, network effects and monetization of data. Furthermore, laws should comprehend the working of algorithms (pricing, search rankings and product suggestions) to detect deflections from fair competitive practices. A competitive market structure with balanced competition laws, not imposing over-enforcement or under-enforcement, bodes well for investment and innovation in the digital retail sphere to catalyse economic growth.

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