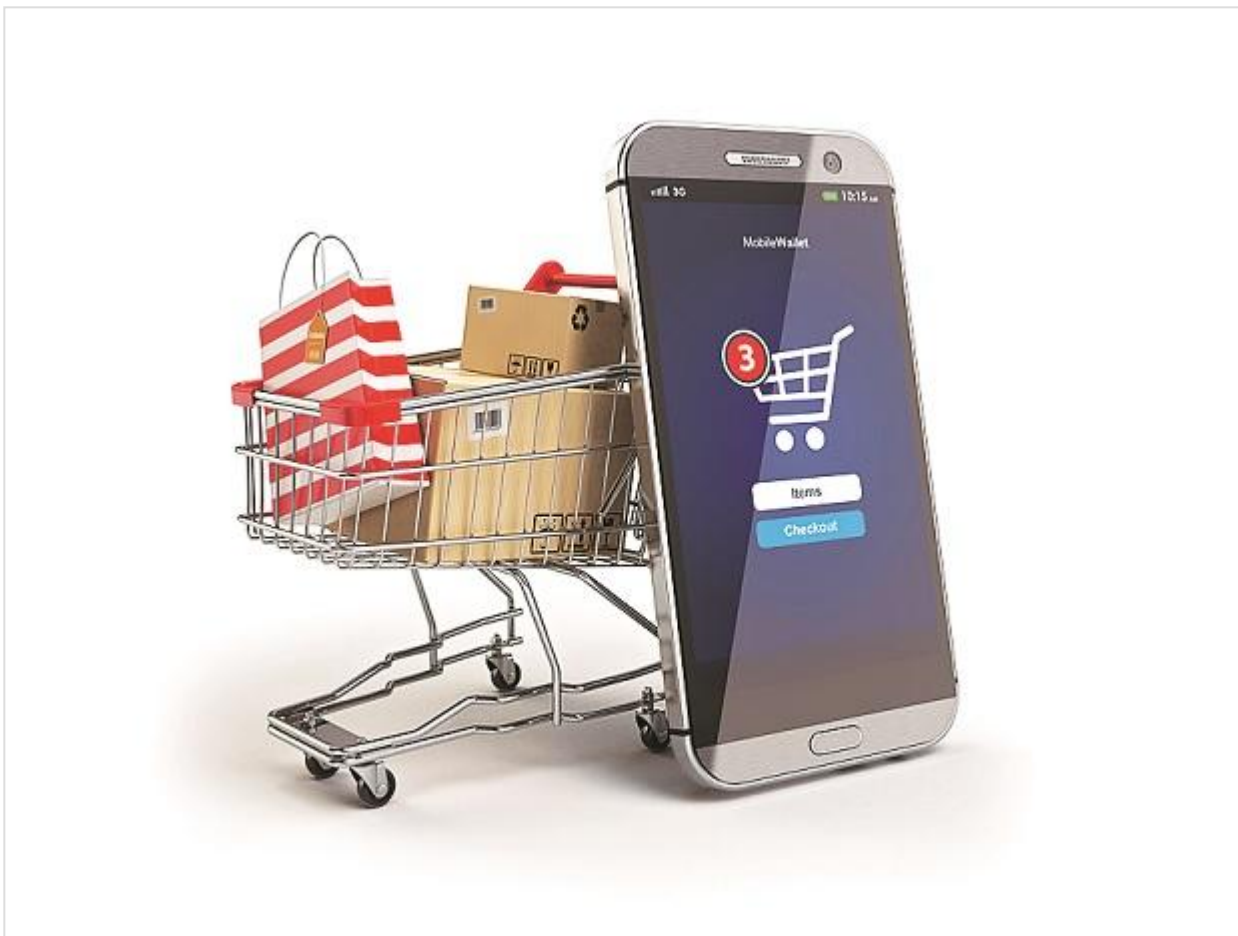


Business Standard

How Competition Law plans to regulate digital economy, plug loopholes

The plan is to come out with rules by the year-end for bringing e-commerce market players under the ambit of competition laws

Apoorva September 01, 2019 Last Updated at 18:59 IST



The Competition Commission of India (the CCI) released the interim observations of its study for regulating the digital market last week. The interim study only looks at specific sectors of the e-commerce goods (mobiles, electronics/electricals, lifestyle and grocery) and services (hotels and food) markets. The CCI has

sought public comments on the interim findings by September 30. The plan is to come out with rules by the year-end for bringing e-commerce market players under the ambit of competition laws.

Experts stress that the study is currently at a preliminary stage. “The views and impact are being studied only in relation to some sectors of the e-commerce market,” said Vaibhav Gaggar, managing partner at Gaggar & Partners, Solicitors & Advocates.

The interim report highlights key competition issues in the e-commerce space like deep discounting, the imposition of unfair terms and conditions, the growing dependence of brick and mortar establishments on online platforms, and opaqueness in search rankings. However, experts said, the consumers’ perspective is missing in

the interim observations since the only stakeholders that have been identified are online and offline retailers, manufacturers, online marketplace platforms, service providers, and payment systems.

“The CCI must address the concerns across all pillars of the value chain to ensure that consumers get the best possible experience,” said Kazim Rizvi, founding director of The Dialogue, a research and public policy think tank.

The interim report also treats platforms and marketplaces as a homogenous category and does not look at the inter-relationship between the market players of a particular segment. These include predatory pricing to oust competitors from the market and cartelisation.

Experts differ in what the possible implications of the market study could be for e-commerce companies. “The study does not target specific companies. However, the results of this study may point to potentially anti-competitive practices and the CCI may decide to open case-specific investigations. Thus, sector inquiries allow the CCI to set priorities in the enforcement of Indian competition rules,” Vaibhav Choukse, partner (Competition Law), J Sagar Associates said.

Some experts have, however, expressed the need for being cautiously optimistic about what impact this study could have on e-commerce in India since this is purely a market study and not a probe that could be used to fix responsibility. “Although, the CCI has commissioned several market studies before, its own jurisprudence while adopting regulatory decisions affecting such sectors has not necessarily shown any familiarity with the findings of such market studies,” said Avirup Bose, associate professor of competition law and policy, Jindal Global Law School.

The regulation of e-commerce markets has become a pressing concern. “The rise of data-driven business models has witnessed increased reliance on algorithms, which in the competition space can also be used for disguised collusive practices, price signalling, optimising joint profits, information on consumer or territorial preferences. The digital space presents new challenges to competition agencies where old tools may be found inadequate,” said Dhanendra Kumar, former chairman of the CCI.

In this context, the recently released report of the Competition Law Review Committee, headed by Corporate Affairs Secretary Injeti Srinivas, becomes extremely relevant. Among other things, it has made several recommendations to plug the regulatory loopholes in new-age markets. The committee has recommended amendments to the law for accommodating instances in new-age markets that are not specifically covered by the traditional definition of a horizontal or vertical relationship, and for accommodating hitherto uncovered acquisitions of small digital companies within the merger control regime.

Most experts said soliciting of public comments for the market study is a step in the right direction. “The best way to regulate the digital market would be to participate in transparent public consultation processes regularly,” said Vinay Shukla, senior associate, competition law at Nishith Desai Associates.

Experts say the CCI needs to take “cautious steps” towards assessing new markets and their practices while ensuring appropriate distinctions are drawn between different practices. “The currently available competition law tools are generally sufficient, but that they could be modernised (instead of being overhauled),” Choukse notes.