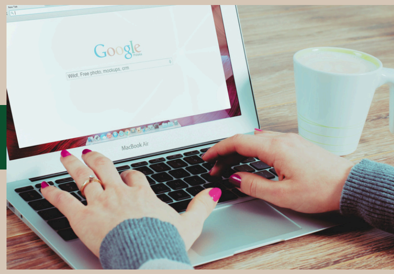
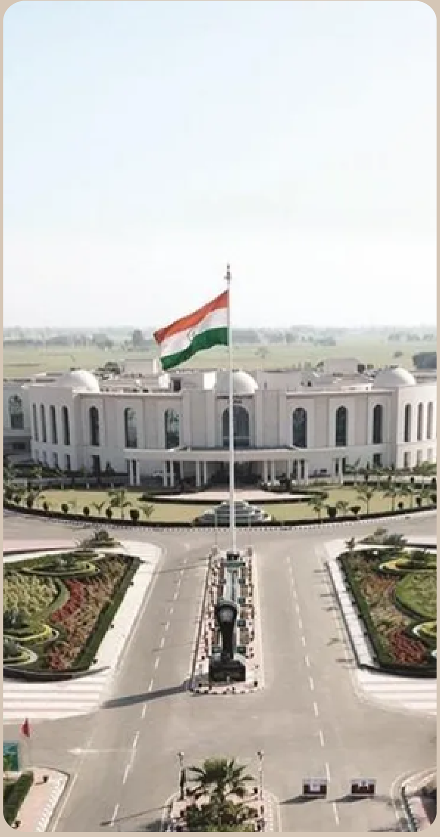
VIGILANCE

December 2024
Volume 1, Issue 3

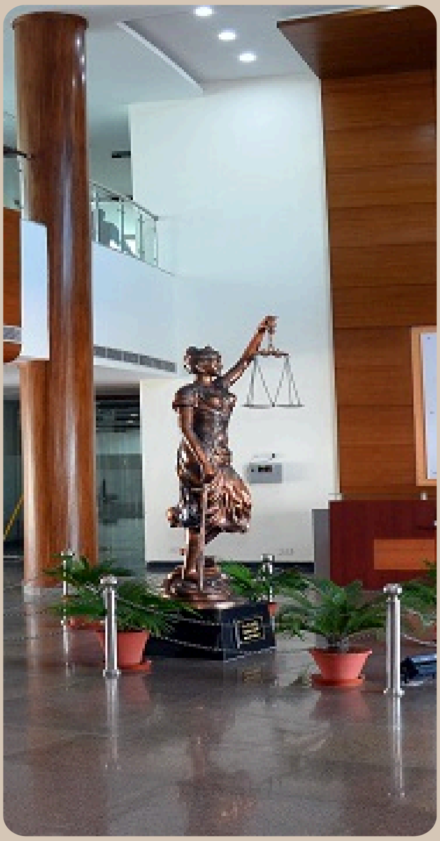
Vigilance embodies the core principle of the Centre for Competition and Consumer Protection Law (CCCPL). We strive to ensure fair competition, protect consumer rights, and promote a level playing field for all.



ABOUT RGNUL



The Rajiv Gandhi National University of Law (RGNUL), Punjab, was established by the State Legislature of Punjab by passing the Rajiv Gandhi National University of Law, Punjab Act, 2006 (Punjab Act No. 12 of 2006). The Act incorporated a University of Law of national stature in Punjab, to fulfill the need for a Centre of Excellence in legal education in the modern era of globalization and liberalization. In 2015, RGNUL became the first and the only NLU to have been accredited by the National Assessment and Accreditation Council (NAAC) with an 'A' grade. In 2018, RGNUL was amongst the four NLUs to have been granted an autonomous status by the University Grants Commission and has been ranked among the top law schools in India in the National Institutional Ranking Framework (NIRF), by the Union Ministry of Human Resource Development, Government of India.



ABOUT CCCPL

The Centre for Competition and Consumer Protection Law is a research centre dedicated to advancing understanding and promoting awareness of competition and consumer protection laws. This initiative is driven by a passionate group committed to ensuring a fair and competitive marketplace. Through their research and advocacy efforts, the center aims to contribute to the development of sound legal frameworks that protect consumers and foster healthy competition. By engaging in academic research, policy analysis, and outreach activities, the center will play a vital role in shaping the legal landscape and safeguarding the interests of both consumers and businesses.

PREFACE

The Centre for Competition and Consumer Protection Laws (CCCPL) has been established with the vision of fostering advanced research and studies in the dynamic fields of Competition and Consumer Protection Laws. With the ever-increasing growth and complexities of the economy, competition and consumer protection laws have emerged as pivotal areas in ensuring market efficiency, healthy competition, fair trade practices, and most importantly consumer welfare. The centre seeks to address critical legal and regulatory challenges across various domains such as antitrust laws, market regulation, consumer rights, and e-commerce, among others.

A primary objective of CCCPL is to institutionalize interdisciplinary research and learning in competition and consumer laws while providing a robust platform for students aspiring to excel in these areas. To achieve its goals and vision, the centre aims to actively collaborate with industry experts, regulatory bodies, academicians, and practitioners to offer practical insight on the subject matter and bridge the gap between theoretical knowledge and its application in the real world.

Recognizing that aspiring professionals in these fields must stay informed of the latest developments, CCCPL is committed to the dissemination of information and knowledge. As part of this endeavour, the centre has introduced a monthly newsletter, Vigilance to keep readers updated on the latest news, amendments, policy changes, and case laws in the fields of Competition and Consumer Protection Laws. In addition to providing updates, the centre delves into legal concepts mentioned in the news pieces, presenting them in a simplified manner to ensure that readers not only stay informed but also develop a clear understanding of the subject matter.

We, the faculty coordinators of CCCPL congratulate the entire team of members led by Ms. Sanya Kanwar for their tireless efforts in compiling and designing the **Volume 1 Issue 3** of Vigilance.

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SAMSUNG HAS ACCUSED CCI OF UNLAWFULLY DETAINING ITS EMPLOYEES AND UNLAWFULLY SEIZING DATA.

Samsung Electronics has alleged that the Competition Commission of India illegally detained its employees and confiscated confidential data as part of a raid connected with an investigation into anti-competitive practices in e-commerce, with the investigation zeroing in on exclusive launch deals between smartphone producers such as Samsung and the sale platforms of Amazon and Flipkart.

Samsung has claimed that it has been subjected to arbitrary action by the CCI in its legal filing. Employees were detained without any justification, and data was seized without proper authorization or adherence to legal protocols by the regulatory body.

The CCI has not responded to the allegations but has been aggressively investigating collaborations between smartphone manufacturers and e-commerce portals to figure out if these collaborations actually restrict competition and limit customer choices. Samsung's lawsuit will probably become the benchmark for defining the extent by which any action of regulatory authorities should be restricted in India.

This incident adds to Samsung's woes in India. In September 2024, more than 100 workers at a Samsung factory near Chennai were briefly arrested for attempting an unauthorized protest demanding better wages and working conditions. Such incidents have intensified operational and reputational issues for the company in one of its key markets.

According to legal analysts, the Samsung case against the CCI can have long-term implications for corporate and individual rights in the event of regulatory actions. Businesses and regulators will closely watch the judiciary handling of the case, which can shape future regulatory-business interactions in India.

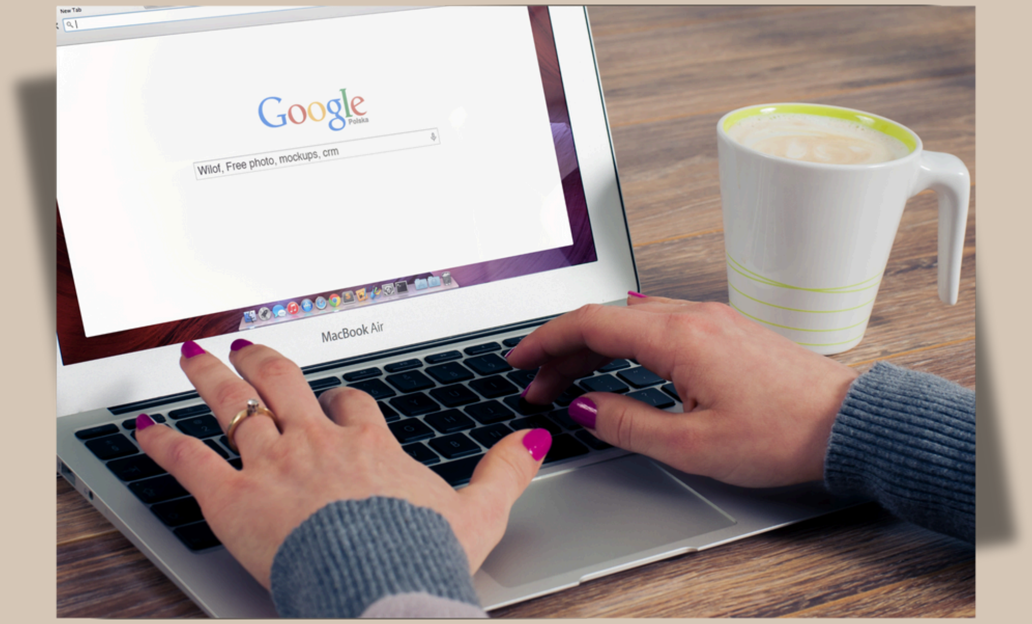
ANTITRUST LAW - EXPLAINER

Antitrust law, also known as competition law, ensures fair competition in the market by preventing practices that harm consumers and smaller businesses. A key concern in such laws is exclusive agreements, where certain products or services are made available only through specific sellers. These agreements may appear positive in the short term, but they do tend to limit the choices of consumers and make it hard for other businesses to compete in the same arena. Moreover, it is tough for new entrants to gain market share in the industry. It may result in a few dominant players that have negative effects on consumers as well as competitors in the market. Under these practices, it is governed and covered by India's Competition Act 2002 that provides the authorized mechanism for investigating certain adverse behaviors like a deal that restrains competition adversely, abuse dominant positions, price fixing, to name a few. This should provide a smooth level playing for businesses of various sizes, better availability of choices before consumers, a fair and competitive market.

Procedural fairness is an important aspect of the implementation of these laws. The authorities must follow clear rules in their investigations and respect the rights of businesses and individuals. For example, detaining employees without valid reasons or collecting data without proper authorization can violate legal boundaries and undermine trust in the system. Such actions not only harm the rights of those involved but also weaken the legitimacy of regulatory processes.

SOURCES - REUTERS

GOOGLE FACES CCI PROBE OVER GAMING APP DISCRIMINATION



BACKGROUND

Google's 2022 initiative to allow real money gaming (RMG) apps on its Play Store in India through a pilot program exclusively permitted Daily Fantasy Sports (DFS) and Rummy apps. This selective approach sparked controversy in the gaming industry, particularly affecting platforms offering diverse gaming formats. The tech giant defended its stance citing India's complex gambling legislation, regulatory uncertainties, and the judicial recognition of DFS and Rummy as skill-based games.

CCI'S ORDER

The Competition Commission of India (CCI), under Chairperson Ravneet Kaur, has ordered an investigation into Google following a complaint by WinZO Games Private Limited. The complaint alleges multiple anti-competitive practices, including discriminatory platform access, advertising restrictions, and arbitrary payment warnings. The CCI found prima facie evidence of Google violating Section 4 of the Competition Act, 2002, particularly noting potential violations in three key markets: licensable OS for smart mobile devices, app stores for Android OS, and online search advertising services.

The Commission's concerns center on Google's selective onboarding process, which allegedly denies market access to excluded developers and distorts competition. WinZO's co-founder, Saumya Singh Rathore, highlighted the market distortion, noting that 95% of the fantasy market is controlled by a single player, while three players dominate 90% of the rummy market. The investigation will scrutinize how Google's policies have affected marketing and customer acquisition costs, with selected categories reportedly seeing costs drop to a quarter of previous spending.

The CCI has directed its Director General to complete the investigation within 60 days, examining the rationale behind Google's selective inclusion policies and their competitive impact. This investigation follows previous actions against Google, including ₹2,273 crore in fines imposed in 2022 for other competition law violations. The outcome could significantly influence the regulation of digital platforms in India's gaming industry and set precedents for future tech governance.

DISCRIMINATORY PLATFORM ACCESS IN GOOGLE'S GAMING APP POLICY - EXPLAINER

Discriminatory platform access, as highlighted in the WinZO case, refers to the selective and potentially unfair treatment in allowing access to a platform or marketplace. Under Section 4(2)(c) of the Competition Act, 2002, such practices can amount to abuse of dominant position if they result in "denial of market access in any manner."

In the present case, Google's pilot program exclusively allowed DFS and Rummy apps on its Play Store while excluding other real money gaming apps. This selective approach creates two distinct issues under competition law:

1.Market Access Barrier: By allowing only specific categories of gaming apps, Google effectively denies other gaming developers access to the Android app marketplace, where it holds a dominant position. This directly impacts their ability to reach potential users through the primary app distribution channel.

2.Competitive Disadvantage: The exclusion creates an unfair advantage for selected apps (DFS and Rummy) while disadvantaging others. This is particularly significant given that Google's Play Store is essential for reaching Android users, which constitute a majority of India's mobile users.

According to Section 4(2)(a)(i) of the Competition Act, imposing unfair conditions in purchase or sale of goods or services is prohibited when done by a dominant enterprise. Google's selective policy potentially violates this provision by imposing unfair conditions on gaming app developers who wish to access the Play Store platform.

The CCI's investigation will examine whether this selective access policy creates an artificial barrier to market entry and whether it can be justified by Google's stated concerns about regulatory uncertainty and risk management.

SOURCES - The Hindu, Live Law, Business Standers.

GOVERNMENT LAUNCHES AI TOOLS, E-COM SAFETY MEASURES TO BOOST CONSUMER PROTECTION

THE INITIATIVE

On the event of Nation Consumer Day, which is celebrated on 24 December, the ministry of Consumer Affairs, Food and Public Distribution, New and Renewable Energy under the ministership of Mr. Pralhad Joshi, began a number of measures to improve consumer protection, such as a helpline powered by AI and instruments to identify dishonest advertising tactics. Reliance Retail, Tata Sons, Zomato, and other major e-commerce companies promised to increase the safety of online buying. To empower consumers and speed up dispute resolution, these new initiatives include the e-maap portal, the Jago Grahak Jago mobile app, and the AI-powered National Consumer Helpline.

THE NEED FOR INITIATIVE

The initiative is taken in the light of growing complexities for consumer protection against surrogate advertising as it was emphasized in the meeting by the minister who had participated virtually that 6,587 of the 3,628 cases that were submitted to the National Commission between January and November of this year were resolved at the district, state, and federal levels by the nation's three-tier consumer court system. In response to the growing concerns, Mr. Joshi stated "While this digital revolution offers incredible opportunities, the Indian government believes it is equally important for our consumers to feel confident and make informed choices." Prior to this initiative a government portal called e-Daakhil Portal, which was introduced in 2020 and made available nationwide in June 2023, has attained 100% acceptance for online complaint submission.

The initiative was well aligned with the theme of the day which was "**Virtual Hearings & Digital Access to Consumer Justice**", highlighting the importance of technology in ensuring consumers' protection and empowering them.

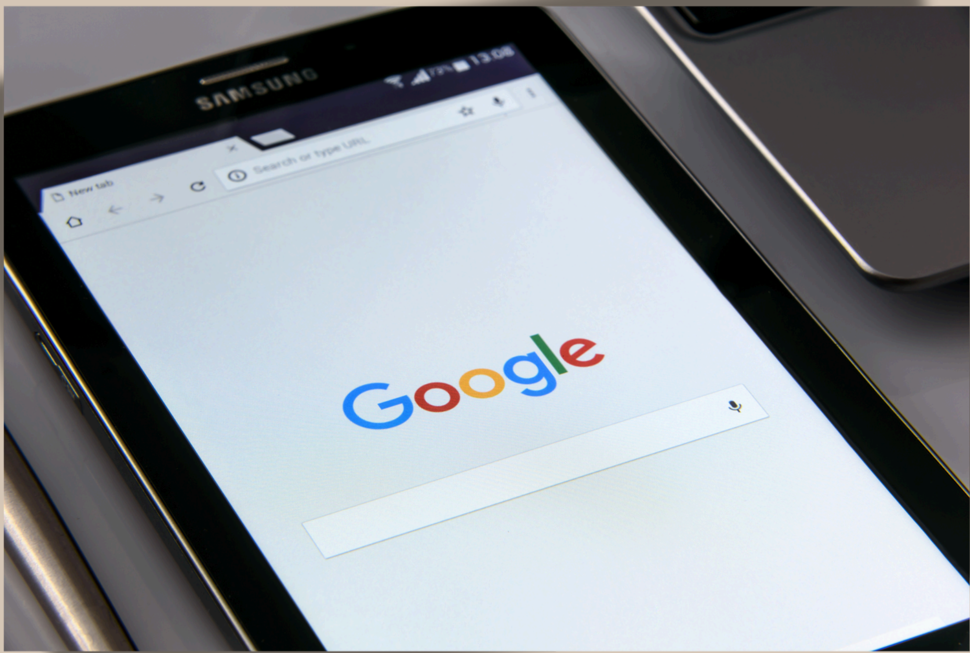
A GLIMPSE OF CONSUMER PROTECTION AND RELEVANT SECTIONS FOR PROTECTION AGAINST AI - EXPLAINER

Consumer protection deals with defending consumers against deceptive commercial activities. Which takes laws, rules, and procedures intended to guarantee fair commerce, stop exploitation into consideration, and offers redress in the event of complaints. The Consumer Protection Act, 2019, which superseded the previous 1986 Act, is the primary law governing consumer protection in India. The Act gives consumers more control, outlines their rights, and creates dispute resolution procedures. Right to Safety, Right to Information, Right to Choose, Right to be Heard, Right to Redressal, Right to Consumer Education all of these are the rights which are given to ever consumer in ensuring the consumer welfare and their protection and empowerment. In order to have a codified set of rules and regulations Indian Government in 2019 initiated The Consumer Protection Act. The framework for safeguarding consumer interests and resolving complaints is established by this Act. It creates the District, State, and National Consumer Disputes Redressal Commissions as the three tiers of a dispute resolution process.

Most legal frameworks do not specifically define consumer protection rules pertaining to artificial intelligence. However, AI-related goods and services may be subject to the Consumer Protection Act, 2019 and associated regulations in India. Sections 2(34) and 47: Product Liability,Service Deficit (Section 2(11)), Practices of Unfair Trade (Section 2(47)), Section 94: E-commerce Provisions all are the sections associated with consumer protection from AI.

Sources - The Economic Times, IBEF.

GOOGLE PROPOSES FIX TO SOLVE SEARCH MONOPOLY



INTRODUCTION

There has been a landmark ruling in August 2024 in U.S. District Court for the District of Columbia by Judge Amit P. Mehta. Many competition concerns were brought up against Google, mainly regarding Google maintaining an illegal monopoly in online searches by paying companies like Apple and Samsung. Subsequently, the government responded by asking the judge to force Google to sell Chrome as a remedy to the situation. Google intends to appeal said decision, but alongside has proposed some changes of their own to fix the search monopoly.

GOVERNMENT PROPOSED CHANGES

The U.S. government has given many suggestions to the court regarding the search monopoly, which Google termed as a drastic attempt to intervene in the search market. Some are that Google should divest any stake in AI products that compete with search, should be prevented from entering the above-mentioned paid agreements with Apple and other companies and even asked for a potential sale of Android.

GOOGLE’S ALTERNATIVE

Google has asked Judge Mehta to allow them to continue with paid agreements to give their search engine primacy over others, but in a less restrictive manner than earlier. What this means is that Google would make the companies non-exclusive to only Google’s search engine. The agreements would be amended in a way that Apple could select different search engines to show up for iPhone/iPad users. In the matter of cell phone makers using the operating system Android, Google has proposed to unbundle its Play Store from its search engine and Chrome browser.

CONCLUSION

Google believes that its approach is that of a ‘robust mechanism’ and the government believes that drastic changes are to be made to ensure fair competition. Ultimately, the final decision is up to the judiciary which will be given in April as the Google proposals have set the stage for a trial.

SEARCH MONOPOLY- EXPLAINER

When a business controls the majority of search traffic and dominates the internet search industry, it creates a search monopoly that makes it extremely difficult for rivals to compete. With this ability, a player can establish guidelines for information presentation and access with little opportunity for creativity or alternative methods. It frequently occurs in monopolies formed by exclusive agreements with software or device manufacturers who use their market dominance to stifle rival search engines.

Because the dominant company has less motivation to enhance its offerings or provide better options, this kind of monopoly reduces the diversity of search results. Because they have fewer options, consumers may have to pay more or compromise their privacy. Because they must follow the monopolist's regulations, businesses that depend on search engines for visibility may also be impacted, which could have an impact on their success.

Furthermore, it raises questions regarding privacy and potential misuse when one business has such much control over user data. Preventing the formation of search monopolies is crucial to maintaining a fair and competitive digital environment. Better privacy policies, increased consumer choice, and innovation are all facilitated by promoting alternatives and limiting the power of any one corporation.

Sources - The Economic Times, The Drum

CENTRAL CONSUMER PROTECTION AUTHORITY TO INVESTIGATE THE ALLEGED DIFFERENTIAL PRICING BY THE CAB AGGREGATORS

BACKGROUND

Recently, a picture was posted on social media displaying that an iPhone user was charged more than the Android user of the same ride on the mobile application of the cab aggregator Uber. The same was not a standalone incident and there exist various such social media posts alleging differential pricing done by cab aggregators. Along with this allegation, there are more than 3200 complaints against large business corporations such as Ola and Uber. Recently, Prahlad Joshi, the Union Minister of Consumer Affairs, announced on “X” (formerly Twitter), that the Central Consumer Protection Agency (CCPA) will investigate the matter.

LEGAL ASPECT

The Union Minister of Consumer Affairs, Prahlad Joshi, stated that such practice is a blatant disregard of Consumer Rights. Upon deeper analysis, it could be derived that in such cases of differential pricing, the consumers are being charged in a divergent manner for using a certain type of Operating System on their smartphones without blatant announcement. The Indian Legal System lays down several rights of the consumers inclusive of which is the Right to be Informed, as enshrined under the Right to Information Act, 2005 (“RTI Act”). This lays down for the right of the consumers to be informed about the quality, quantity, potency, purity, standard and price of goods done to protect the interest of consumers against unfair trade practices.

POSSIBLE REASONS FOR SUCH PRICING

Upon enquiry regarding such differential pricing, Uber stated that the pricing is determined through artificial intelligence. In such cases, wherein the prices are calculated depending on various factors such as the pick-up location, drop-off location, type of service used, traffic and real-time demand, it is easily possible for companies to tweak the calculation of fares based on the hardware and individual consumer behaviour.

Such allegations, if true, fall within the bracket of unfair trade practices. Consumers upon booking a cab enter into an implied contract with the cab aggregators and such actions of the aggregators constitute fraud.

RIGHT TO FAIR PRICE - EXPLAINER

The Right to Fair Price makes sure that the Consumers are not subjected to unfair or exploitative prices. It means the consumers have the right to expect that everyone is charged an equitable price for a similar service and is not excessive or exploitative. It protects the consumers from 'Price Gouging' which means increased pricing of a commodity or a service at a time of emergency and in the cases of market monopoly or oligopoly. Businesses are also expected to determine fixed pricing for the services or goods provided by them and to specify the costs of their services or commodities including any extra fee or surcharge.

Sources - INC 42, Economic Times.

US COURT BLOCKS $25-BILLION MERGER DEAL BETWEEN KROGER AND ALBERTSONS

INTRODUCTION

A U.S. District Judge blocked the $25-billion merger deal between Kroger Co. ("Kroger") and Albertsons Companies Inc. ("Albertsons") on December 10, 2024, citing anti-competitive concerns. The ruling, issued in favour of the Federal Trade Commission ("FTC"), marked a major victory for antitrust enforcement in the United States.

BACKGROUND

The proposed merger aimed to consolidate the two leading U.S. grocery chains, potentially creating a dominant market player with approximately 5,000 stores across the country. Kroger defended the merger by arguing that it would lower prices, improve employee benefits, and enhance competition with global giants such as Walmart and Amazon. However, the FTC, supported by state attorneys general, contended that the deal would reduce head-to-head competition, drive up grocery prices, and weaken bargaining power for unionized workers. Separate from the federal ruling, a Washington state court judge also issued an order to block the merger, emphasizing concerns about market concentration in the state, where half of all supermarkets are owned by either Kroger or Albertsons.

COURT'S DECISION

U.S. District Judge Adrienne Nelson concluded that the merger was likely to eliminate direct competition between Kroger and Albertsons, thus violating U.S. antitrust laws. The court dismissed Kroger's claims about potential efficiencies and cost savings, stating that the purported benefits were speculative and unenforceable. Judge Nelson noted that despite the companies' promises to lower prices and improve benefits, there was no guarantee that post-merger business realities would allow them to fulfil those commitments. Although the FTC did not present sufficient evidence to support its claim that the merger would harm competition for unionized grocery labour, the judge acknowledged the agency's argument as “compelling and logical.”

IMPLICATIONS

Following the ruling, Kroger and Albertsons expressed disappointment and are considering their options, including a potential appeal. An Albertsons spokesperson argued that the merger would have expanded competition and benefited both consumers and employees. However, grocery workers' unions welcomed the decision, expressing concerns that the merger would have led to job losses and reduced union influence. The White House praised the court's decision, reiterating its commitment to fighting corporate mergers that increase prices and undermine small businesses. FTC spokesperson Douglas Farrar emphasized that the ruling highlighted the importance of robust antitrust enforcement to protect consumers and workers.

DOMINANT POSITION - EXPLAINER

Abuse of Dominant position occurs when a company with significant market power uses that power unfairly to harm competition or exploit consumers. Under Section 4 of the Competition Act, 2002, dominance itself is not illegal; the issue arises when the dominant company engages in practices that harm market fairness or consumer interests. Section 4(2) of the Act outlines several forms of abuse, including imposing unfair contract terms, limiting the production of goods or services to hurt consumers, or using predatory pricing to drive competitors out of the market. Another example is leveraging dominance in one market to gain unfair advantages in others, such as tying products or denying competitors access to the market. The Competition Commission of India (“CCI”) investigates such practices to ensure fair competition. Factors like market share, economic strength, and consumer dependence are considered when determining whether a company has abused its dominant position. Remedies can include penalties, corrective actions, or structural changes to restore competition. The goal of Section 4 is to prevent companies from exploiting their dominance in ways that reduce consumer choice, hinder innovation, or distort the market. While companies can achieve dominance through legitimate business practices, abuse of that position is prohibited to maintain a fair and competitive marketplace.

Sources - Reuters, Economic Times,

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