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Vol. 4, Issue 18 - 2018



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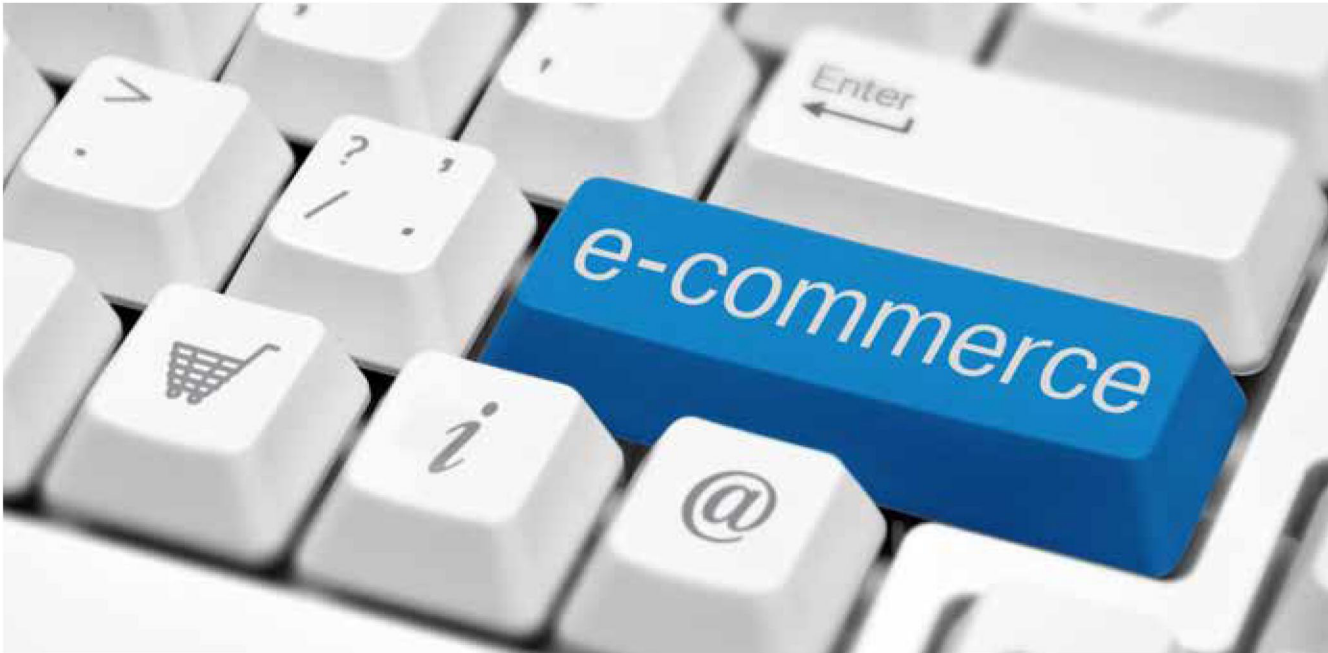
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E-COMMERCE & COMPETITION LAW



“Competition is not only the basis of protection to the consumer, but is the incentive to progress”

- Herbert Hoover

Competition is the lifeblood of strong and effective markets. If there is no competition in the market, there would be no incentive to lower prices or bringing improvement in the goods and services. If there is monopoly of one firm in the market, it may charge higher prices without fearing a loss of sales to a competitor or may impose unfair trading conditions on consumers. The role of competition authorities and competition policy is therefore very important in order to maintain healthy competition and to remedy some of the situations in which the free market system breaks down. Competition and anti-trust laws provide the framework for competitive activity and protects the process of competition. The ultimate objective is to protect consumers and save jobs and businesses, all at the same time.

Healthy competition has brought about many innovations, amongst which is e-commerce. On

the other hand, the advent of e-commerce has increased the competition and has extended it cross-border. In fact, it is changing the competitive landscape in which companies operate and the way they make commercial and strategic decisions. Hence, there is a need to identify whether changes brought about by e-commerce require specific attention in competition assessments and whether the competition law frameworks can effectively deal with competition issues that might arise in an e-commerce context. E-commerce offers many benefits and more challenges to the competition in the market. On one side, the competitive benefits of e-commerce include lower prices, provision of comparison shopping, introduction of new products and services constantly offering better choices to customers, faster buying/selling procedure resulting due to more efficient distribution, stronger competition, more information and more reach to consumers as there is no theoretical geographical limitations. But on the other side, it also has anti-competitive harms such as an increase in the likelihood of collusion, price obfuscation, network effects and vertical restraints etc. Vertical restraints may include price recommendations or restrictions from manufacturers, restrictions on selling online, restrictions from submission of offers to price

comparison websites and contractual restrictions on cross-border sales etc.

E-commerce has reinvented the business models and therefore there is a need to change competition policy and framework as well, and as the technology is constantly changing and will keep on changing the trade patterns, therefore the competition law frameworks should be designed as such to cater the changing dynamics of e-commerce. E-commerce may tend to change the scope of very basic concepts of competition law. One such concept is “Relevant market”. The competition authorities need to decide and determine whether e-commerce constitutes a separate market from the traditional retail activity or not.

Determination of relevant market is the first step in assessment of abuse of dominance position which may further lead to predatory pricing, dissimilar trading conditions, tying, price discrimination, limiting production, boycotting or refusal to deal with certain customers. The argument may be that online and offline markets could be considered as separate markets and therefore online market alone may be characterised as a relevant market. The implications of network effects that characterise e-commerce

