Imposing Ex-ante Rules on Digital Platforms

Why in news?

Recently, the European Union adopted the Digital Markets Act (DMA), which seeks to impose ex-ante structural limitations on the practices of large technology platforms.

What is ex-ante regulation?

- The Latin word “ex-ante,” means “before the event”.
- Ex-ante regulations aim at identifying issues in the market beforehand and shape stakeholder behaviour and responses through regulatory intervention.
- Ex ante regimes tell business precisely how to behave, or what to do.
- In Ex ante, the regulator predict such events beforehand and therefore prone to any bias harboured by the regulators.
- Traditionally, ex-ante regulation has been deployed in utility markets, such as electricity distribution.
- Ex-ante obligations in utilities aims for non-discriminatory treatment, interconnection and price regulation.

Ex post actions

- *The regulatory action that takes place once a market failure or distortion arises is ex post.*
- *Ex post actions always take place on information available.*
- *Conventional tools of anti-trust operates at ex-post level.*

What is the Digital Markets Act of EU?

- The Digital Markets Act aims to ensure that these platforms behave in a fair way online.
- Together with the Digital Services Act, the Digital Markets Act is one of the centrepieces of the European digital strategy.
- Under the DMA, the European Commission will designate certain providers of core platform services as "gatekeepers" that fulfil a number of criteria.
- After the specific gatekeepers are designated, they will have 6 months to comply with the DMA obligations.

What is the issue with ex ante regulations on digital services?

- A poorly designed and executed ex ante regulation is proven to
  - stifle the innovation outputs in an economy
  - reduce its ability to catch up with its global competitors

Problems with ex ante regulations on digital services

- **Digital services as utility** - Treating the content and application layer of the internet as a utility (as opposed to the infrastructure layer) is an inappropriate comparison.
- **Lack of evidence** - The imposition of ex-ante regulations without any evidence of anti-competitive effects represents a return to a structure-based antitrust approach.
- Solely depending on this form can be counterproductive to innovation and consumer welfare.
- **Effect on regulators** - Ex-ante frameworks tend to confine regulators and reduce their regulatory agility.
- **One-size-fits-all approach** - Operational models for technology platforms vary significantly and the risks associated with such models also differ.
- A one-size-fits-all approach may benefit certain players at the cost of others.

What about the ante regulations in India?

- The Competition Commission of India (CCI) is studying the relevance and feasibility of introducing ex-ante regulations to deal with digital markets in the Indian context.
- Standing Committee on Finance headed by Jayant Sinha has already identified anti-competitive practices by big tech and is likely to recommend an ex-ante framework for digital markets.

What lies ahead?

- There is a need to ensure that the markets serve consumers with the best products and prices and meet evolving demand.
- Focusing instead on protecting competitors can prove counterproductive in the long run, insulating Indian consumers from innovation, competition, and consumer choice.
- Rushing into “plug-and-play” solutions from other jurisdictions could prove detrimental to India’s own ambition of creating an inclusive, efficient and robust digital economy.

References

1. The Hindu Businessline | Imposing ex-ante rules on digital platforms
2. The Hindu Businessline | CCI’s study on ex-ante regulations in India
3. ECPIE | Economic Costs of Ex ante Regulations
4. European Commission | The Digital Markets Act

Quick facts

The Competition Commission of India (CCI)

- The Competition Commission of India has been established by the Central Government with effect from 14th October 2003.

- CCI is a statutory body responsible for enforcing The Competition Act throughout India.
- The CCI consists of a Chairperson and 6 Members appointed by the Central Government.
- **Functions**- It is the duty of the Commission to
    - Eliminate practices having adverse effect on competition
    - Promote and sustain competition
    - Protect the interests of consumers
    - Ensure freedom of trade in the markets of India
    - Give opinion on competition issues
    - Undertake competition advocacy
    - Create public awareness
    - Impart training on competition issues

