Regulation of Digital Giants in India

Why in news?

A recent order by the Competition Commission of India (CCI) against Meta platforms reinforces the needs and challenges associated in regulating digital giants.

Why data regulation is important?

- **Digitised economy** – In the 21st century, the economy has become digital and *data is the new oil*.

  *The **Economic Survey 2024-25** highlighted India's rapid digital transformation, and role of artificial intelligence (AI) in shaping the nation's economic landscape.*

- **Virtually limitless utility** – Unlike oil, data has virtually limitless utility as it can be *collected, analyzed and reused indefinitely*.
- **Dominance in digital markets** – Data plays a foundational role in creating and sustaining dominance due to its unique characteristics and the competitive advantages it provides.
  - Data is both the source and the enabler of dominance in digital markets.
- **Influences consumer behaviour** – Data is used to refine algorithms, offer *hyper-targeted advertising, and create personalized user experiences*, thereby locking consumers into their ecosystems.
  - **For example**, platforms like Meta leverage vast data pools from billions of users for influencing consumers.
- **Data-Driven network effects** – More users generate more data while using platforms, thus enhancing the platform's value and deterring competitors.

What are the various orders of CCI for regulating digital giants?

Competition Commission of India (CCI)

• It is the *chief national competition regulator* in India.
• **Historical background –** *Based on the Raghavan Committee recommendations* the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act) was repealed and replaced by the Competition Act, 2002.
• **Established in** – 2003, by Ministry of Corporate Affairs
• **Aim** – To establish a competitive environment in the Indian economy by engaging with all stakeholders, the government, and international jurisdiction
• **Composition** – Chairperson and *not more than 6 Members*.
• All appointments are made by the Central Government.
• **Appellate mechanism –** Competition Appellate Tribunal was established in 2009 to hear and decide appeals against the orders of the CCI.
• It was *replaced with the National Company Law Appellate Tribunal (NCLAT)* in 2017.

- **Issues with Meta** – It found the *privacy policy update* of Meta's subsidiary, WhatsApp, in 2021 was an abuse of dominant position.
- It *forced users to accept a data-sharing agreement* on a "take-it-or-leave-it" basis and thereby it gained *access to user data across its platforms*, including Facebook and Instagram.

***Meta Platforms**, formerly Facebook, is a tech conglomerate that owns Facebook, Instagram, WhatsApp, and other services.*

- **Orders against Meta** – CCI issued a landmark order imposing a *fine of ₹213.14 crore* and *forcing several behavioural remedies*.
- It also includes a 5-year ban on sharing user data collected on WhatsApp with other Meta companies such as Facebook and Instagram, for advertising purposes.
    - But NCLAT granted a stay on the 5-year ban and the penalty, subject to Meta depositing 50% of the total penalty.
- **Issues with Google** – It was accused for abusing its dominant position across several markets including
    - Licensable operating systems for smart mobile devices
    - App stores for Android devices
    - Non-OS-specific mobile web browsers
    - Online video hosting platforms
    - General web search services in India.
- It was found to have abused its dominant position by *mandating the pre-installation of its apps on Android devices.*
- **Orders against Google –** In 2022, it was fined ₹1,337.76 crore.
- The penalty imposed on Google was *upheld by NCLAT in 2023*.

What are the challenges in regulating digital giants in India?

- **Lack of provision against monopoly** – India's competition law, namely, the Competition Act, 2002, currently lacks explicit provisions to address data-centric monopolies.
- **Negligent focus on data-based dominance –** While *traditional frameworks focus on price-based dominance*, digital markets often witness dominance arising from data

aggregation.
- **Lack of inter-agency coordination** – Absence of explicit coordination mechanisms *between the CCI and the Data Protection Board of India* limits the effectiveness of addressing overlapping concerns.

What are the regulations taken on digital giants globally?

- **U.S. Antitrust litigation** – Meta is accused of creating barriers for competitors by acquiring Instagram and WhatsApp platforms, reducing competition.
- Google was found guilty *for violating the Sherman Act* due to exclusive agreements in search and advertising markets.

***Sherman Act** (1890) is the 1st federal law to prohibit monopolistic business practices and antitrust practices in the U.S.*

U.S. Subcommittee Report on 'Competition in Digital Markets' called for urgent reforms in antitrust laws to address the growing power of tech giants like Meta.

- **Australia's regulations –** Measures were taken to address the dominance of digital platforms like Meta and Google.
- **Facebook–Germany Case** – Meta is accused for combining user *data from different sources without explicit consent* thereby violating EU competition law & GDPR.
- **European Union (EU) regulations –** Meta is currently under scrutiny in the EU for its ad supported subscription model.
- Google has already been fined over 8 billion Euro in the EU for anti–competitive practices across 3 major cases.

How India can regulate digital giants?

- The parallels between the global regulatory actions against Meta and Google emphasise the *importance of addressing data exploitation, vertical integration, and anti-competitive practices* through a multidisciplinary approach.
- **Passing of Digital Competition Bill** – While India had proposed a *draft bill in 2024*, it is still under deliberations on certain provisions like ex-ante provisions.

***Ex-ante** provisions refer to future events that are based on forecasted predictions rather than concrete results.*

- It is aimed *to prevent anti-competitive practices by tech giants* like Google, Facebook, and Amazon.
- **Making amendments to the Competition Act** – It can *introduce "data monopolization"* as a parameter for assessing market dominance.
- **Incorporating global best practices** – It can address the concerns, such as *mandating interoperability and data-sharing agreements* or separation of integrated

services.

- **Harmonising various regulations** – Steps can be taken to increase coordination mechanisms between the CCI and the Data Protection Board of India.
- India could draw *inspiration from the EU's integration* of competition law with the Digital Markets Act (DMA) and GDPR.
- This could create frameworks that tackle data exploitation and anti-competitive practices comprehensively.
- **Making regulatory frameworks dynamic** – It can *anticipate emerging challenges* posed by rapidly advancing technologies and the ever-expanding influence of tech giants.

Reference

The Hindu | Needs and Challenges of Policing Digital Giants

Related News - Draft Digital Competition Bill 2024 | Role of Competition Commission of India

