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**Buyer Power, Competition Law and Platforms**

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### **Abstract**

Buyer power in input markets, and in particular labour markets, have received the attention of the press, antitrust authorities and scholars in the recent past. Anticompetitive behaviour by global technology giants is an ongoing concern. A combination of the two raises serious issues. This paper looks at the economics behind buyer power and discusses it in relation to competition law and digital markets including platforms. A short discussion about the implications of these developments for India is provided.

**Keywords:** Buyer power, monopsony, oligopsony, competition law, platforms

## 1. Introduction

In the recent past there have been rumblings of discontent about our experience in the digital world. Even though the world remains enchanted with the prospects from artificial intelligence, machine learning and deep learning to improve our lives, we have also started wondering about the dark side of the digital revolution. Of course, the Janus like nature of the digital revolution have been evident to us from the beginning. The world wide web provided seamless (at least for those with speedy connections) access to communication and information which was also used to distribute material of dubious quality. Facebook has had to deal with issues of privacy and the dissemination of fake news. WhatsApp has been used to spread rumours that have led to lynching of innocent people and there are frequent wars on Twitter. All these developments grab the attention of the public and officials alike.

What is not that remarked upon but has been gaining steady interest is the notion of buying power. Competition authorities and popular magazines have started getting worried about the effects that platforms such as Amazon and Uber have on the many sellers of goods or services that operate on their platforms. This in turn has raised the possibility that platforms may abuse their size to exploit those who participate on them. The previous sentence begs for a large number of clarifications, particularly what do we mean by size and what is abuse.

The concept, borrowed from the Economics literature, that seems relevant is monopsony. In Economics a monopsony is the equivalent of a monopoly on the buyer side. Just like a monopoly is a single supplier a monopsony is a single buyer. Monopolies have consumer welfare implications since they are likely to increase prices and reduce output. Similarly, monopsonies tend to reduce the price paid to suppliers and to restrict the amount that is bought.

At first glance, this does not seem an issue that competition law should be bothered about given its focus on consumer welfare. Lower input or intermediate good prices should result in lower consumer good prices, is the obvious reaction. This, however, is not true, as we shall show later. At any rate, there have been very few antitrust cases that have been brought that relate to cartelization or abuse of dominance on the buyer side. Similarly, studies on the effect on the benefits and costs of mergers of buyer power have also been meagre. Recently, there has been a renewal of interest on the antitrust effects of monopsonies. Scholars have tried to develop measures that mirror the hypothetical monopoly test that is used in competition law.

Another question to ask what do the above two issues have to do with platforms. Platforms it can be argued do not buy or sell but merely connect buyers and sellers and charge an intermediation fee so they cannot by definition have any buyer power or selling power. We would argue that that this might be true of some platforms it is not always the case. Nevertheless, it is possible that competition law, in its present form, is powerless against platforms given the paucity of cases against them. Of course, it could be the case that platforms are inherently competitive, so there are fewer competitive problems. On the input side the situation may be even more unclear. There is no clear legal doctrine or standard tools to evaluate market power even in standard markets, leave alone platforms. Also, some of the issues raised, such as exploitation of labourers or low wages, have traditionally been dealt with labour laws and employment laws. It could be argued that competition authorities already have their hands full without having to delve into unknown territories.

So, this paper will likely remain somewhat speculative. However, the issues it raises are very relevant to the Indian situation. There are many small sellers who sell on Amazon and

thousands work for Uber. Their welfare should be important to the government and if competition law provides another arrow in the quiver it should not be frowned upon.

This section will be followed by a short discussion on the analysis of monopsonies and its effect on consumer welfare. We will follow up by talking about the cases that have been looked at by competition authorities and the development of possible tools to estimate buyer power. After that we will try to extend the discussion of buyer power to platforms and discuss the efficacy of the concept. We will end with a discussion of the relevance of these concepts to India.

## **2. Buyer Power**

As described in the introduction a monopsony represents a single buyer of inputs. A standard example is that of a large factory in a small town, which effectively becomes the sole employer in the town. The analysis can be extended to other inputs, for example, car parts and accessories. A large automobile manufacturer may be the sole buyer of auto parts within a geographical region. Of course, it may be difficult to find a pure monopsony, but one may find firms with various degrees of buyer power. The situation is similar to that with regards to monopoly power. Firms will differ in terms of the substitutes available to consumers for their products, which will determine its ability to charge higher prices without losing too many consumers. In the parlance of Economics this translates into a low elasticity of demand.

A monopsony, being the sole buyer, faces the whole supply curve, just like a monopolist faces the industry demand curve. To get more inputs it has to offer higher remuneration: not only to the last input hired but to all others. The situation is analogous to that of a monopoly. To sell more a monopoly has to lower prices across all the units it can sell, assuming that it cannot practice perfect price discrimination. To determine the optimal amount of output to sell and the price to charge the monopolist equates the extra revenue it receives from the last unit sold to the extra cost of producing it. Having determined the output, it then uses the demand curve to determine the price it should charge (Figure 1).

Similarly, a monopsony has to decide on the remuneration it is going to pay to the inputs he buys and also the amount of the input to buy. If labour is the input at stake the monopsony has to decide on what wages to pay and how many to employ. Here, the monopsony has to balance the extra cost of hiring an extra input, the marginal resource cost, and its extra contribution to the firms profit. The latter term is called the marginal revenue product and is arrived by multiplying the marginal product, the extra amount an additional unit of input produces, with the extra revenue to be gained by selling an extra unit in the product market. So, it opts for an amount such that the marginal revenue product is equal to the marginal resource cost. After that it uses the supply curve for the input to find the minimum price at which suppliers of the input are willing to offer that amount and pays that amount.

This is shown in Figure 2. If the input market was competitive, so that input suppliers had many buyers to sell to, the firm would not be able to exercise its monopsony power. It would have to pay the market price and buy the amount indicated by the supply curve. So, the input price paid by a monopsony is lower than the competitive price and the amount bought is also lower. This is again similar to that of a monopoly whose product price is higher than the competitive price and the amount sold is lower. A monopoly is an inefficient market structure because there are consumers who would like to buy if the price was lower and the monopolist would like to sell

to them since he could make more than the marginal cost of producing these units, adding to his profit. A similar argument can be made for a monopsony.

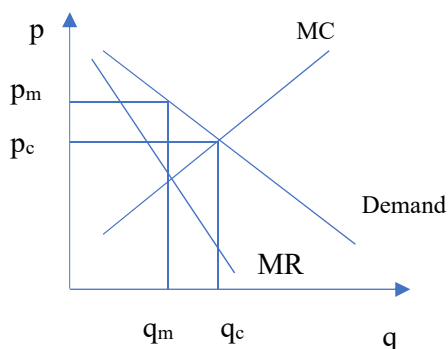


Figure 1.

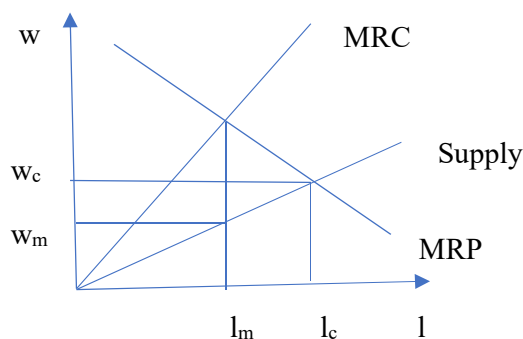


Figure 2.

Figure 1 shows how a monopolist decides on pricing and output while Figure 2 shows how a monopsony determines the wage rate and the level of employment. The firm equates the marginal revenue product with marginal resource cost to determine  $l_m$ . It then uses the supply curve to figure out the minimum wage that workers should receive,  $w_m$ . Note that that the value of the workers' labour is much higher and given by the MRP. So, a monopsony pays less than the value of the workers' labour, compared to a situation where the labour market is competitive, and the wage is  $w_c$  and employment is  $l_c$ .

The effect of monopsony behaviour on product prices is ambiguous and dependant on the type of competition faced in the product market. If the product market is competitive then the monopsony has no option but to charge the competitive price. However, if the monopsony has some degree of monopoly power then the product price could also be affected. The question is whether prices will be lower or higher if the firm has buyer power. There is no clear answer, but we will present a simple model which will give a clear answer.

Let us suppose a firm faces an inverse demand curve  $D(q)$  in the product market, a labour supply curve  $S(l)$  in the input market and a production function  $q = f(l)$ . We are assuming that there is only one input, labour. Then the firms' profits can be written as

$$\begin{aligned} \pi &= pq - wl \\ &= D(q)q - S(l)l \\ &= D(f(l))f(l) - S(l)l \end{aligned}$$

To maximize profits, the firm would take the first derivative with respect and set it equal to zero.

$$f'(l)D(f(l)) + D'f'(l) - S(l) - lS'(l) = 0$$

In contrast, if the firm faced competition in the input market, at a wage  $w$ , then its problem would be to set

$$f'(l)D(f(l)) + D'f'(l) - w = 0$$

Comparing, the two expressions we can see that, employment would be lower in the case of a monopsony. This immediately, translates into lower output, since in this simple model we have only one input. A lower output then translates into higher prices in the product market. The analysis would be more complicated if the production function had more inputs, such as capital.

Then the question that would arise is whether the market for capital has some degree of monopsony power. If not, then it is possible that a monopsony would substitute capital for labour and may in fact increase output and thus lower prices. This is only a conjecture at the moment.

Even though a firm may not be a monopsony it is possible that in some input markets there might be a few large firms, giving rise to an oligopsony. This would be the analogue of an oligopoly in the product market. Unfortunately, the literature on oligopsony is sparse, contrary to that for oligopoly. The bulk of the industrial organization literature is focused on the product market. Blair and Haynes (2012) extend simple models of Bertrand (price) and Cournot (quantity) competition for input markets and also provide a version of the Lerner's index. However, this limited work pales in size to the volume of literature on the product side.

### **3. Competition Law and Buyer Power**

The standard prohibitions against anticompetitive agreements, abuse of dominance and mergers and acquisitions that harm competition can be applied on the input side as well. However, there are very few cases involving use of competition law to investigate buyer power in input markets. There are several reasons for this.

First, the focus of competition law has been on consumer welfare. This was partly due to the effort made to sharpen the focus of competition law through the judicial process in the US. This is because the language of the competition laws in the US, in the Sherman and Clayton Acts were very broad. However, the Supreme Court in the US has confirmed that antitrust laws apply to both sides of the market.<sup>1</sup> There is one exception, in that section 6 of the Clayton Act allows workers to form unions, which can be thought of as a form of cartelization. In the European Union (EU), the focus of competition law on consumer welfare is enshrined in the general guidelines, '[t]he objective of Article 81 is to protect competition on the market as a means of enhancing consumer welfare and of ensuring an efficient allocation of resources.'<sup>2</sup> The importance of consumer welfare as the goal of competition policy seems to be ubiquitous. (UNCTAD 2014) As we have seen, with competitive markets, buyer power does not increase product prices and so does not affect consumer welfare. It may have been felt that buyer power could have the effect of suppressing input prices. Lower input prices, one may conclude, wrongly, could only lead to lower product prices. Thus, it was felt, that buyer power could not lower consumer welfare.

The other reason for the lack of interest in buyer power has been that the most important or visible input has been labour. The theme of exploitation of workers has echoed over the years in ideologies and has led to extensive social policy making. Workers rights and their welfare have been safe guarded through minimum wage and employment laws. No one has contemplated using competition law to protect workers. In advanced countries decline in unionization and the whittling down of worker protection might be sufficient reason for using competition law to protect workers. No such case probably exists in India. Workers in the organized sector probably have enough rights and are protected, though the increased use of contract labour is a cause for concern.

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<sup>1</sup> Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co., 549 U.S. 312 (2007)

<sup>2</sup> Albaek, Svend (2013)

At any rate our concern is that labour is not the only input. If using competition law in labour markets is unnecessary or complicated, because of the interaction with other laws, or politically difficult, it should not preclude its use for other inputs. It is quite possible that the market for intermediate goods and other inputs are characterised by buyer power and has anticompetitive effects.

As remarked earlier, the lack of interest in buyer power has resulted in the absence of an analogous literature to that of the industrial organization literature on the product side. Of course, the input side does have a significant presence, particularly in the literature on vertical integration. However, models of strategic behaviour on the input side are conspicuous by their absence. For example, there is a large literature on product differentiation but no corresponding work on employer differentiation, except in the management literature in strategy or organizational behaviour. There is a large literature on differences in the quality of labour but that is in labour economics, which brings us to our next point.

Since labour has traditionally been an input with the highest visibility and accorded enormous importance, not unduly, since for most of us earn a living by working for wages, the study of input markets has largely been subsumed within the study of labour markets and has been the preserve of labour economics. The kind of impetus that resulted in the industrial organization literature on the product side has been absent. Instead, the questions that arose were primarily about the welfare of workers and the effect of minimum wage laws which then became an issue of labour economics. The other important input, capital, has been the preserve of financial economists, which again, has not been interested in buyer power.

Consequently, concepts like the relevant market, the SNIPP test, HHI, concentration ratios and Lerner's index have not been defined for input markets. It is of course theoretically quite simple to extend these concepts, but, the challenge will arise in implementation. Put simply, the concept of relevant market defines a group of products that are close substitutes and restricted to a geographical area. If we replace products with inputs it seems like a reasonable definition. However, there will be differences between intermediate and primary inputs and other issues such as how far down the supply chain to go looking for input substitution are challenges that will have to be confronted. These should not be more daunting than those already faced on the product side. Naidu et al (2018) develop concepts like the small but significant and non-transitory decrease in wages (SSNDW), just like the SSNIP test for market definition and similarly downward wage pressure (DWP) to mirror UPP indices. They discuss, how the DWP can be further decomposed into a markdown and the diversion ratio.

Instead of delving further into these concepts, which the interested reader can pursue on her own, we will briefly summarize the few cases that have made it to the courts. Most of these have had to do with specialized labour markets in the US, such as doctors and athletes. In *Kartell versus Blue Shields of Massachusetts* the allegation was that hospitals had colluded to fix pay scales of doctors and nurses. This inactivity was suddenly disrupted by the revelation that high tech firms such as Apple and Google entered into agreements that precluded firms from hiring each other's employees. This led to a flurry of activity with Department of Justice and the Federal Trade Commission in the US coming out with antitrust guidelines warning against such behaviour. Other jurisdictions such as Canada have also discussed the issue as has the OECD. More interestingly it was discovered that franchises like McDonalds also practiced non-poaching agreements. The use of such agreements is surprising, particularly among low skilled workers, and it is quite common.

The effect of buyer power on abuse of dominance in the labour market and its effect on encouraging merger activity has not been looked at in terms of case law. The effect of buyer power in reducing prices of other inputs has not featured at all. There is anecdotal evidence that giant stores such as Walmart tend to squeeze its suppliers. However, that has not been investigated for abuse. For one thing, dominance is not a crime but abuse of dominance is and so it is difficult to establish that large firms were abusing their dominance. The other issue is that most people would feel that lower input prices would keep product prices low.

We will now move on to discuss the effect of buyer power in digital markets, especially that of platforms.

#### **4. Digital markets and buyer power**

Commerce is moving to the internet, more so in developed countries. In countries like India, a whole host of firms have cropped up to take advantage of the many problems with the smooth operations of the market. We are aware of firms like Amazon and Flipkart, but there are numerous other firms who sell their wares on the net. The business models of these firms are different. Some are pure business to consumer (b2c) businesses using the internet to sell their products. For example, Namdhari's in Bangalore is a grocery which deals in organic produce and other kitchen staples. The company has a large number of brick and mortar stores which it complements with an online presence, which is of relatively recent origin. Probably, it felt competitive pressures from its competitors, though, Bangalore's bad traffic could have been a factor.

Big Basket and Towness only have an online presence, with the latter specializing in vegetarian and regional produce. Big Basket covers a whole range of products including meat and fish. Others like Licious operate in niche markets, like meat and fish products in this case. Fresh to Home started off in a similar way but have since expanded to supplying vegetables as well. The size of the online market in groceries is probably small but could in future years become bigger. At that time issues of buyer power could appear. However, the above examples exhibit the diverse ways in which various vendors are trying to gain market power.

Some of the online sellers are platforms, which sometimes rely on two sided markets. Some of them claim that they are pure market places. They are in the business of matching and they are neither buyers nor sellers. An example could be Swiggy, which is in the business of delivering food. It has an app by which consumers can order food from restaurants, which is then delivered by its fleet of delivery boys. It could claim that it is a platform that connects consumers with delivery agents and restaurants and that it has no responsibility of the quality of food or the delivery service. However, it does have a dedicated call centre and if there is a problem it looks into it.

In contrast, Uber in India, is a taxi cab aggregator. Again, using its app consumers can book rides, which it then services using its pool of drivers. Uber claims it is a pure platform that connects riders to drivers. There is no dedicated call centre or email address. The only method of complaining is to raise issues on its website. Issues of misbehaviour by drivers are shrugged off by saying that Uber is a platform and that it bears no responsibility for the behaviour of drivers or passengers. Ola, another taxi service, using a similar business model is more responsive but shares the same philosophy as Uber. In contrast, Meru is more like a traditional taxi company, providing rides for passengers.



Thus, there are many types of platforms, even within the same product. Some of them claim to be pure platforms, that offer matching services for a fee. That claim would probably be true for matchmaking sites like Shaadi.com. However, for taxi cab aggregators that claim does not hold. When a passenger wants a ride, they don't get to see which drivers are interested in offering a ride and then negotiate a price with them to finally choose one driver. Instead, the aggregator offers a price and quality of vehicle combination. This is a take it or leave it offer. On the driver side possibly, a similar deal is offered. If some driver agrees, then a transaction takes place. The difference between the selling price of the ride and the buying price for the driver is unknown. If the aggregator has monopoly power, then it can charge high prices.<sup>3</sup>

The source of the monopoly power lies in network effects and switching costs on the input side. Successful aggregators have large pools of drivers, so they can provide better coverage and lower prices than competitors. Drivers would tend to join a larger network because it can provide more consistent employment. Consequently, new entrants would find it harder to enter the taxi cab aggregator market.

The network effect is compounded by lock-in. Drivers have to invest in their cars and have to keep making the monthly instalment payments, resulting in a certain degree of lock-in into the aggregator. Of course, they could operate as private drivers, but incomes streams would become more uncertain. The possibility of switching between aggregators is difficult to judge given the lack of information. Some cabs bear the logo and are painted with the aggregator's name. They also have specialized software, making switching aggregators difficult.

The same two effects mentioned above are likely to result in buyer power as well. Added to that, drivers are typically poor and are unlikely to move to other occupations or locations to look for alternative work. Consumers, on the other hand, should have more choices. There should be more substitutes like owner driven cars and public transport for them, partially mitigating the monopoly power on the product side. However, the combined effect will be lower remuneration for drivers and higher prices for consumers.

This is not to suggest that all platform models will suffer from this problem. Each product and market are unique, both from the product side and from the input(s) side. However, the presence of network effects tends to reward size, resulting in dominance on the product side. This can then be transferred to the buyer side. The reverse can also happen.

## **5. Buyer power and India**

The preamble to the Competition Act 2002 reads, “An Act to provide, *keeping in view of the economic development of the country*,<sup>4</sup> for the establishment of a Commission to prevent practices having adverse effect on competition.....” It is difficult to judge to what extent competition law has had any discernible effect on the citizens of India. The Competition Commission of India is in the news occasionally but its actions do not seem to have any effect. Consumers only seem to complain when price rises seem egregious, as when airlines increase airfares in tandem due to a rise in oil prices. Even then it is usually the DGCA who steps in, rightly or wrongly. Even if, consumers are feeling the brunt of anti-competitive practices, they are not complaining.

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<sup>3</sup> In fact, since aggregators have large amounts of information, they can probably estimate demand for each ride for a customer and capture the entire consumer surplus.

<sup>4</sup> Italics inserted by author

At the same time, there are horror stories on the input front, particularly among farmers. There are many reasons for the farmers' plights, but, one story that has been repeated many times is that of groups of middlemen who connive to deprive farmers of a decent price for their products. This seems a textbook case of cartelization in an oligopsony. It is sometimes said that Indian competition act is largely based on the EU law and as such it addresses developed countries' concerns. We don't know how the phrase, *keeping in view of the economic development of the country*, got into the competition act, but maybe we could think of concentrating more on the input side of markets.

As far as digital markets are concerned there is cause for concern there as well, even though, such markets are small in size, currently. Among a certain part of the population, mostly urban, tech savvy and time constrained, but not necessarily rich, the buying experience is significantly restricted to digital markets. If we need food we turn to Swiggy or Zomato, for groceries to Big Basket, to HouseJoy for plumbing services, Urban Ladder for furniture and Urban Clap for beauty services. To serve these needs a whole host of people have moved into these occupations, often from semi-rural areas. It would be sad if these people found themselves effectively working as employees but without the job security or benefits that come with employment.

As this sector grows and becomes dominated by platforms more and more workers and providers of intermediate inputs would find themselves similarly squeezed. Amazon and Flipkart could use their buying power to squeeze small businesses and medical services providers such as Practo could do the same for doctors and nurses.

It could be argued that labour and employment laws could help workers and for the farming sector the government provides for minimum support prices. Also CCI may not have the expertise to do competition assessment in these markets and getting entangled with different laws and political issues may be foolhardy. However, if the trend of expansion of digital markets continues it might find its hands forced.

## **6. Conclusion**

This paper looks at a number of issues that have been prominent at one time or another but that have faded away, only to regain importance due to the emergence of the digital economy. The issue of monopsony and antitrust law briefly gained prominence in the 1990s. Separately, monopsony or monopsony power in labour markets has been a subject of study since the year 2000. A lot of the literature was involved around trying to figure out whether minimum wage laws lowered employment, as standard competitive models of labour markets would suggest. The evidence seemed to suggest that it did not and one possible conclusion that could be drawn is that labour markets are not competitive. Various authors estimated supply elasticities for labour which were quite low, which did not suggest competition. The issue of buyer power also received some attention around that time given the growing clout of superstores like Walmart and there are a number of studies on oligopsony power in national and international markets. The lack of growth in wages in the US in the recent past, despite fairly high levels of growth in the economy and record high profits, prompted another attempt to look for explanations. One was found in labour market distortions, viz., monopsony. A contemporary development has been the pre-eminence of large digital giants in the economy. Some of these firms operate as platforms. Competition authorities around the world have been troubled by some of their activities, that might constitute abuse of dominance and they have been

investigated and fined. The focus has been on the product side but complaints of anticompetitive agreements on the “buying side” have also surfaced. This dragged buyer power in input markets and in particular labour markets back in the limelight. However, abuse of dominance issues such as market foreclosure or margin squeezing have not been studied in buyer markets. Our aim will be to partially fill this gap in the future, in this paper.

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