

**6<sup>th</sup> International Two Days Virtual Conference-2021  
on  
Competition Law: Risk, Challenges and The Way Forward**

**Organized By:**

**ASSOCHAM**

**Chief Guest Address By  
Shri Ashok Kumar Gupta, Chairperson, CCI  
September 23, 2021 (03:00 PM - 04:00 PM)**

**Mr. Sumant Sinha, Sr. Vice President, ASSOCHAM and Chairman & Managing Director, ReNew Power**

**Mr. Deepak Sood, Secretary General, ASSOCHAM**

**Mr. David Anderson, Partner In Charge, Brussels Office, BCLP LLP,**

**Mr. Manas Kumar Chaudhuri, Chairman, ASSOCHAM National Council on Competition Law and Partner, Khaitan & Co.**

**Mr. Karan Singh Chandhiok, Co-Chairman, ASSOCHAM National Council on Competition Law and Practice Head – Competition Law and Dispute Resolution, Chandhiok & Mahajan, Advocates and Solicitors**

**Ladies and Gentlemen,**

**A very good afternoon from India to you all!**

1. It gives me immense pleasure to be with you, albeit virtually, in the inaugural session of the 6<sup>th</sup> edition of the International Conference-2021 on “Competition Law: Risk, Challenges and The Way Forward”. This is an opportune time to take stock of the journey traversed, difficulties faced, experience gained and challenges overcome during the last 12 years in enforcing and evolving the competition law framework. This journey could not have been as smooth without the constant and valuable feedback from the industry associations and cooperation of competition law practitioners.

2. I am sure this conference will provide an opportunity for robust and frank exchange of insights on various issues of contemporary relevance for competition regulation. It will also help understand best global practices, which will go a long way in making domestic learning more holistic and futuristic, which would be in alignment with the best global practices. At the outset, my compliments to ASSOCHAM for designing this event on multiple themes that cover virtually all aspects and facets of competition law enforcement, with a pronounced focus on competition regulation in digital markets.

3. Keeping the overarching theme of the conference in mind, let me also share some thoughts on the experiences and the difficulties and challenges we faced during the decade-long journey.

4. Competition is the life force of markets that creates the best incentives for businesses to increase efficiency, drives their productivity and fuels innovation. Despite its all-encompassing benefits, healthy competition may not emerge on its own. Even the most ardent votaries of a market economy recognise that liberalised markets cannot be presumed to be competitive and efficient. Without oversight and necessary intervention, we could witness a chaotic environment, where dominant firms misuse their market power to fence out competition, cartels drive up prices or anti-competitive mergers weaken the competitive structure of markets, resulting in businesses getting affected and consumers being deprived of value for money. Such distortions break the link between liberalised markets and the productivity and innovation gains they are believed to yield. Therefore, the need for regulatory oversight cannot be overemphasised. However, at the same time, it should also be ensured that such oversight is not locked into legacy architecture and is regularly fine-

tuned with changing times and must suit the dynamic business environment, especially in the present digital world.

5. In line with modern competition law philosophy, the approach of the Commission's intervention in markets is not warranted to protect individual competitors or incumbents but to protect competition as a process. The objective is to bring about market corrections where fair competition is found to be hindered due to anti-competitive conducts.

6. Technology and disruptive innovations in the digital economy are rapidly altering the contours of markets, transforming the ways of doing business, ways of communication and ways of transactions. While on one hand, the digital incursions foster competition by creating more opportunities, bringing transparency to online intermediation and reducing search cost for consumers, on the other hand, the increasingly technology-laden economy is bringing new issues and concerns to competition policy discourse.

7. Various sectors in the economy are witnessing rapid changes in markets, which are increasingly shifting towards a digital platform-centric configuration. These platform markets are, by their very nature, winner-takes-all or winner-takes-most. Network effects, access to large amounts of data, economies of scale and scope, induced behavioural biases among consumers, etc., in digital markets, may heighten market concentration and result in the creation of impermeable entry barriers.

8. Data hegemony by some digital companies may lead to an "attention economy", in which Big Tech players work to capture users' attention, build profiles of their choices and habits, then sell those profiles to advertisers. Moreover, since these digital platforms are the ones who make the rules about how different users would

interact on their platform, it gives them an incentive to engage in conduct that may not only impede competition in the market but may also strengthen their incumbency advantage.

9. The Commission has a very important role in ensuring that these platforms remain neutral, offer a level playing field and allow enterprises, big and small, that access consumers through these platforms, to compete on the basis of merits.

10. Merger control in digital markets also presents some unique challenges. With increasing numbers of acquisitions and investments, large platforms are continually expanding the scope of their business interests, and the motivation may be collection of complementary data that help reinforce their market position. Data is a crucial factor for economic power and for judging market power on the internet. An important issue is how to account for data in a merger assessment. Since not all digital markets are alike, nor is all data, interventions in merger reviews in technology markets need to be guided by case-specific economic evidence of competition concerns.

11. In these fast-evolving and dynamic markets, a regulator's task is much like hitting at moving targets. The regulatory stance needs to be nuanced, and the enforcement toolbox needs to be adapted to these changes so that the instrumentality remains fit for purpose. The challenge is to keep abreast of the developments in these markets and continue to evolve and refine the tools. This will help make timely interventions and strike a fine balance so that efficiency and innovation are not stifled while markets are free from anti-competitive practices.

12. In view of their distinct characteristics, a question that often emerges is whether digital markets demand a different or new antitrust dispensation, or the existing set of antitrust rules have the flexibility and bandwidth to envisage and regulate these

markets. A lot depends on the legal statutory framework of antitrust law in a given jurisdiction. In India, a committee constituted by the government examined the readiness of the extant regulatory framework to deal with potential antitrust issues arising out of the digitalisation of the economy. The conclusion was that the existing provisions are quite flexible and comprehensive for the antitrust assessment of practices emerging in the digital space, and some out-of-the-box thinking is required in the application of platform economics to antitrust problems within the framework of law. While the legal framework set out in the [Indian] Competition Act is broad enough to address competition issues arising out of new-age markets, certain legislative changes, such as enabling provisions in the statute for prescribing additional criteria for merger notification thresholds in terms of deal value, are currently on the anvil.

13. It has been the constant endeavour of the Commission to build capacities and update its knowledge and skillsets. For this, the Commission regularly engages with domain experts besides commissioning market studies for a robust understanding of the construct of the markets in question, identifying issues that may have implications for competition and the possible remedies. The market studies provide an opportunity to the Commission to gain insights from stakeholders across the value chain in the sector. I am happy to share that market studies on e-commerce, telecom sector, pharma sector, film distribution, surge pricing by cab aggregators and an issue-based study on common ownership were initiated by the Commission in recent times. While the e-commerce and telecom studies have been successfully completed, the other market studies are currently ongoing.

14. The Commission has also continued its efforts to streamline and amend its procedures and regulations to promote a trust-based system and facilitate ease of doing business. Recently, the Commission held a public consultation on its draft proposal for review of the confidentiality regime. The objective of the exercise is to

establish a robust information-sharing regime that allows parties to effectively present their cases in the interest of justice without compromising the sanctity of confidential information. The proposal has elicited active response from stakeholders and is being finalised based on the feedback received. On the combination side, the regulation required to provide information related to non-compete restriction clauses has been omitted from the notification form. As a result, parties notifying a transaction are not bound by a general set of standards for the assessment of non-compete restrictions, allowing them the flexibility to negotiate non-compete clauses. Further, the system of electronic filing and digital payment of fees during the pandemic allowed for seamless approval of combination cases. Presently, the average number of days taken to clear combination cases stands at 17 days. The Commission is increasingly receiving combination notices under the newly introduced Green Channel route, which reflects the acceptance and confidence of stakeholders in deeming approval process.

15. Going forward, it will be the constant endeavour of the Commission to ensure that markets are competitive and that enterprises are competition-compliant. For this, the Commission will continue to rely on a judicious mix of competition advocacy for promoting competition culture and intervention through enforcement in cases of transgression.

16. With this, let me conclude by again congratulating ASSOCHAM for conceiving and designing this event with international participation on a theme, which is of great topical and contemporary relevance. I am sure this would go a long way in spreading awareness about the nuances of competition law regime amongst the members of the Chamber. Mr. Sumant Sinha and other eminent speakers have given a number of suggestions. These and many more to be received during the course of two-days conference will be given serious consideration by CCI.

Thank you very much.

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