

Initiative on Choice, Competition and Innovation (ICCI) Launch Event

Centre for Digital Future

Keynote Address

Mr. Ashok Kumar Gupta, Chairperson, Competition Commission of India, July 29, 2021

Good afternoon to eminent panelists & all participants present here for the launch of this excellent initiative on Choice, Competition and Innovation. This comes precisely at a time when policymakers the world over are crafting solutions to the challenges posed by the significant changes in the digital market landscape that are impacting these three cardinal principles of well functioning markets. These unprecedented changes have seen the growth of business ecosystems – i.e. groups of connected firms drawing on digital platforms which leverage their complementors and lock in their customers.

2. I am glad that this vertical, housed in the Centre for Digital Future, is focused on digital economy and will research these issues. I believe that the aim is to undertake meaningful academic and policy discourse in the field of competition economics with a focus on enabling markets that nurture innovation and efficiency in the digital technology ecosystem. I am honoured to be delivering the keynote address at this launch event.

3. The importance of research-based policy discourse cannot be over-emphasised, since markets in these digital ecosystems change rapidly and the policy response needs to be well-informed through the evidence provided by such endeavours.

4. Not very long ago, it was widely contended that market power in technology markets is rare and fleeting, and that intervention would entail a high risk of discouraging innovation. Thus, it was held that digital industries are

characterised by competition for the market rather than competition in the market, placing the digital players in continuous threat of disruption.

5. However, critiques of this notion of digital markets have pointed out that market dominance in these markets is not fragile, but durable. The application of competition law to such disruptive technologies becomes challenging, and the role of the competition authority in the regulatory architecture governing these technologies becomes extremely important. The challenge lies in how to craft remedies, be it antitrust or merger. Is there a role for *ex-ante* regulation? Are there blanket regulations or specificities of the platforms that have to be kept in mind? Competition jurisdictions across the world are confronted by these and many other questions.

6. While there is no doubt that digital markets are the epicentres of technological progress and innovation, lately, they have become centres for entrenched and unchecked dominance. High concentration is a result of the presence of certain characteristics, which makes market power in the digital space uniquely durable. Characteristics such as network effects may prevent a newcomer with superior technology from replacing an established incumbent. Sticky consumer behavior, combined with lack of data portability, increases switching costs and helps maintain the *status quo* in the market.

7. Presence of large economies of scope and consumption synergies between products, result in a market with room for a limited number of players. Digital markets in India are also rife with examples of a single player or duopolies commanding a significant market share.

8. Digital platforms, through their exclusive control over search engines, retail e-commerce, app stores and social media control the bottleneck infrastructure on the internet and provide services to consumers in direct competition with independent businesses. Both the demand side and the supply side depend on

these platforms for access and rely on platforms' rankings and algorithms in order to interact efficiently.

9. Even if these platforms do not exhibit all the characteristics of an essential facility, the essentiality of such platforms cannot be ignored. An entire multi-actor ecosystem of sellers, consumers, advertisers and application developers depends on them for survival. The relationship of multiple actors in the ecosystem with these platforms has been increasingly raising competition concerns. Situations can arise where dominant firms in a market are in a position to extract large rents or even oust their trading partners. The implementation of competition law should improve economic outcomes that can maximise the gains from trade on these platforms and create a balance that incentivises innovation of the platform as well as their trading partners.

10. India, too, has come of age as far its consumer internet companies are concerned. The last quarter saw a record \$6.3 billion in funding and deals for technology startups. We have a startup ecosystem that is very active with a large number of consumers and suppliers. What seems to be missing, is the infrastructure component, which provides startups, with the necessary platform for their operations. However, as platform-to-business rules may lack fairness, and unequal bargaining power may result in an element of exploitation, competition law has to be, increasingly mindful of the dynamics, of these relationships, rather than narrowly focusing on static welfare.

11. All these aspects of digital markets have engaged the Commission in the past few years, as in many other jurisdictions. We understand the huge demand-side efficiencies generated due to network effects, but these very network effects, even coupled with small anti-competitive actions by a platform, may exclude and marginalise rivals, which can have larger economy-wide repercussions. Eliminating such competition-inhibiting behaviour at the earliest is of utmost importance. Initiating antitrust investigations and invoking anti-

competitive remedies as early as possible is crucial to avoid competition harm to the market. Therefore, the Commission endeavours to conclude inquiries in an expeditious manner, with interim measures being considered in appropriate cases.

12. Similarly, 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, possibly motivated by the collection of complementary data that can help reinforce their market position. How do we account for data in a merger assessment? Not all digital markets are alike, nor is all data. Therefore, interventions in merger reviews in technology markets need to be guided by case-specific economic evidence of competition concerns.

13. Keeping these challenges in mind, let me mention that CCI has prioritised and stepped up its scrutiny against online platforms across verticals. CCI has looked at several antitrust cases against e-commerce firms across sectors, such as online retail, food delivery, hotel booking, cab aggregators, search engines, operating systems, online payment systems, etc.

14. The incentive to engage in anti-competitive conduct arises partly because the platforms determine the rules according to which users, including consumers, business users and providers of complementary services, interact on it. For instance, preferencing certain sellers over others may inhibit intra-brand competition. Such conduct may have an effect on competition neutrality on the platform. Digital platforms can also make use of their algorithms to engage in activities that may result in the reduction of inter-brand and intra-brand competition on the platform. They may condition the algorithm results to favour their own private labels and reduce exposure of their rivals in the search results. Such conduct may have an effect on the competition neutrality of the platform.

15. A reduction in exposure on the platform would result in loss of sales for sellers and is a form of constructive refusal to deal. It may also lead to an increase in costs for sellers if the sellers, in order to increase their visibility on the platform, have to engage in promotional activities, such as advertising on the platform.

16. This issue was noted in the recently concluded e-commerce study, wherein, it was observed that, when the online platforms serve as both a marketplace and a competitor on one side of the platform, they have an incentive to leverage their control over the platform in favour of their preferred vendors or private label products, to the disadvantage of other sellers/service providers on the platform. The platforms have a variety of mechanisms that they can use to act upon such incentives, including their access to transaction data and ranking of search results.

17. A dominant platform could also condition access to the platform on agreeing with the imposition of a vertical restraint. For example, the platform could insist that participants enter into exclusive contracts or price parity restrictions in order to operate on the platform.

18. Control over data by gatekeeper firms is another area of anti-trust concern, as it may result in exploitative and exclusionary conduct by firms, which may fall foul of the provisions of the Competition Act. The competition impact of data privacy compromise has now gained traction in the anti-trust framework. After all, firms can compete on the privacy standards they offer to consumers and hence, take the form of non-price competition.

19. Privacy policies put in place by firms with market power may give rise to anti-competitive concerns. For instance, loose privacy policies of dominant firms may lead to exclusionary practices, reinforcing their position and allowing them

to leverage themselves in neighbouring or even unrelated markets, resulting in entry barriers for new entrants.

20. Going forward, it is our duty as a competition authority to assist with the government's endeavour of digitisation by promoting competitive digital markets. I foresee an important role of CCI both in enforcement and policy debates in the following areas of digital markets: (i) understanding the role of data and developing plausible theories of harm involving data; (ii) analysing the dynamics associated with the market power of platforms; and (iii) supervising the way platforms operate in markets with strong network externalities and returns to scale, especially in the absence of multi-homing or protocol and data interoperability. Having developed robust frameworks and in-depth understanding of these markets at the Commission, our approach in digital markets will be carefully crafted, nuanced and minimalistic, so that we don't compromise the efficiencies or stifle the innovation incentives of digital firms and, at the same time, ensure that the markets remain competitive.

21. I congratulate Mr. R. Chandrashekhar, Chairman, CDF for launching this initiative. I hope this forum will take up issues keeping in mind the specificities and peculiarities of Indian markets and provide useful inputs and insights for policymakers and regulators.

Thank you.
