

U.S.-India Business Council, Virtual Roundtable

Keynote Address

Digital Markets and Competition – Non-Price Competition

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1. Good evening and Good morning to everyone present at this virtual event, where we will deliberate on the topic of *digital economy and competition* and its various facets, with a special emphasis on non-price competition. This topic may appear to have been discussed and deliberated upon several times in policy discussions such as these, and all that can be said has been said. However, there have been several developments across the globe when it comes to new legislative and regulatory initiatives to govern digital markets, with competition being central, that such events assume importance for an informed debate. Therefore, it is a pleasure to be in your midst today for this discussion. I appreciate the endeavour of USIBC to make this an annual event and am glad to deliver the keynote address.

2. As we are aware, the rise of digital economy has accelerated manifold due to the pandemic-induced lockdown in several countries. We need to make sure that the steps towards recovery do not irreversibly alter markets and that competition principles can be respected along the way, especially by ‘*gatekeeper*’ firms that provide online intermediation services. This assumes great importance in the Indian context, where the online dependence of consumers is rising exponentially. According to one estimate, India’s consumer digital economy, which was pegged at \$85–90 billion in the calendar year 2020, is expected to become a \$800 billion market by 2030.¹

¹ RedSeer report published at their flagship event *Ground Zero 5.0* on 30 June 2021.

3. Thus, an increasing part of economic activity is going to be facilitated by digital players and channelled through the internet, and a small number of firms have occupied key intermediation positions. This tectonic shift in markets is thus posing challenges for lawmakers and enforcers on how to address the consequent bargaining power imbalance and information asymmetry between platforms and their business users. This imbalance and the resulting concerns were elaborately discussed in the e-commerce market study of the Commission. Following the study, we have seen an increasing number of Informations being filed raising concerns that these firms have, in some sense, become private regulators dictating terms and conditions to participants in their ecosystems. Even if users are uncomfortable with those terms, there are often few viable alternatives to some of the services offered. Strong network effects increase the value of a digital service for consumers and business users, and switching to newcomers is unattractive.

4. India too has come of age as far its consumer internet companies are concerned. We have a start-up ecosystem that is very actively supported by a big policy thrust of the government. These firms play a vital role in competitive markets with their focus on innovation and creating new markets/products. Most start-ups and independent business users are dependent on digital platforms such as app stores, search engines, social media platforms, advertising platforms, etc., for visibility and entry. Digital platforms act as a first touchpoint for a consumer's transaction journey, and it is through the ranking logic of search results and advertisements that an online firm's visibility is determined. It becomes very important that the rules of engagement between business users and platforms are such that this unequal power relative to other businesses in a vertical relationship is not exploited by platforms, and competition on merits is preserved. Increasingly, competition regulatory architecture has to be mindful of the dynamics of these relationships rather than narrowly focusing on static price competition.

5. In the field of antitrust, price has always been an important dimension to measure competition. However, with the advent of the digital economy, the scenario has changed. In a digital setup, a positive price may not even exist. It is well known that, in order to create value through the exploitation of direct and indirect network effects, a digital platform may keep the price zero on the consumer side. The presence of zero prices raises questions regarding the nature of transactions between the platform and its user entities.

6. The most important consideration that a platform gets by keeping the prices zero or negligible is monetisable data. Significant economies of scale also are claimed to arise from a monetisation feedback loop, i.e., the more users an online platform has, the more user data it can collect, the better it can target advertisements to users and the more effectively it can monetise the site. This leads to the scales tipping towards a dominant platform. Data collection by platforms, especially gatekeeper firms, leads to the creation of super profiles of consumers, as they can control, track and link consumer behaviours across platforms, online services and websites. This helps in real-time targeted advertising at the level of each individual consumer and enables personalised pricing.

7. Such high-level targeting is criticised on the grounds that it leads to a more intrusive invasion of privacy. However, this is not just an intrusion of privacy; it also has a serious competition dimension. It further strengthens the ability and incentive to erect barriers to entry and maintain dominance by limiting competitors' access to data, preventing others from getting the data and opposing data-portability policies that threaten data-related competitive advantages, leveraging to enter or strengthen its presence in other markets.

8. Data also needs to be seen as a resource in the sense that rolling out new products and identifying unmet needs rely heavily on data. Access to large amounts of data by incumbent firms that are also invested in vertical complementors can skew competition in favour of the incumbents. There have been discussions on encouraging vertical interoperability for promoting competition within digital platforms or ecosystems to prevent the emergence of market power through anticompetitive leveraging. Privacy as a non-price parameter of competition can be looked at while reviewing data-driven mergers and antitrust cases. Privacy can be seen as a quality consideration under the competition law. Degradation of privacy can have both exploitative and exclusionary implications on competition and can thus be evaluated under the antitrust lens.

9. Another non-price dimension of competition that is very important in the digital market is innovation. Bundling and tying strategies by dominant platforms leads to leveraging and creates threats to innovation. A platform which act as an intermediary between business users and consumers has the ability to appropriate the innovation of business users for creation of its own verticals. There may also be incentive for self-preferencing of its own verticals by the platform over rivals. The issue of hegemony of the platforms over data created and generated by business users which has been used to gain unfair business advantages, is increasingly being highlighted.

10. We know that the telecom industry lies at the core of the digital revolution. After the conclusion of the e-commerce study, a need was felt to study the unfolding competition dynamics in the telecom sector. The study findings indicate that technology convergence has resulted in vertical integration in the telecom industry across the infrastructure and content value chain and led to the forging of strategic partnerships between telecom operators and digital solutions providers including content providers, e-commerce platforms, digital

payment platforms and other cloud-based technology solutions. While it may be premature to declare that vertical integration creates a cul-de-sac from which users find it difficult to switch, some empirical studies suggest that consumers are likely to become 'locked-in' even in seemingly open ecosystems.

11. Going forward, the role of competition authorities will expand to assess the impact of these newly emerging business models based on vertical convergence.

12. Not only in India, but also globally, there is growing discomfort about the market position of some large digital players that control entire ecosystems of sellers, consumers, advertisers and application developers. The relationship of multiple actors in the ecosystem with these platforms is raising several concerns including those relating to competition. The response has been a slew of proposals for regulating these firms with market power relative to other businesses in a vertical relationship or with entrenched market power. As you are aware, the US has seen a broad-ranging set of Bills, more recently the Open App Markets Act, that are being considered to propose new laws to govern such firms. For tech companies, this implies the imposition of new or strengthened access requirements, non-discrimination provisions and interoperability, either through actions by competition agencies or new digital rules through other instruments.

13. It appears that the choice before policymakers is whether to live in an environment with a few highly regulated firms controlling large ecosystems or an unregulated digital world, and the big policy question is which environment will deliver on innovation and consumer benefits. I would say the jury is still out on this, as various jurisdictions experiment with various instruments, and their long-term impact is unknown.

14. Going forward, formal and informal lines of communication between various relevant regulators will have to be opened up to facilitate the comity amongst various regulators/enforcers of law in the discharge of their respective mandates such that regulatory decisions are robust and consistent. For instance, there could

be potential abuse of dominance cases, which might also involve a breach of data protection rules. While overlapping jurisdictions between institutions cannot be completely eliminated, it ought to be harmonised through better regulatory design and improved lines of communication. Inter-regulatory consultation mechanism as provided in Sections 21 and 21A of the Competition Act, 2002, allows for formal lines of communication between CCI and relevant regulators which, going forward, will be extremely important. CCI will remain the body to resolve antitrust and competition related issues.

15. Having developed robust frameworks and an in-depth understanding of these markets at the Commission, we assure you that our approach in digital markets will be carefully crafted, nuanced and proportionate, to ensure that we don't compromise the efficiencies or stifle the innovation incentives of digital firms.

16. With these words, I thank USIBC again for engaging with us through this forum and hope the interactive panel discussion will discuss these issues threadbare and provide ideas for a more balanced policy response.

Thank you.
