



सत्यमेव जयते



25.03.2022

PRESS RELEASE No. 77/2021-22

CCI hosted the ICN UCWG Workshop virtually during 22-23 March 2022.

Competition Commission of India (CCI) hosted the 9th International Competition Network (ICN) Unilateral Conduct Working Group (UCWG) Workshop virtually during 22nd-23rd March, 2022. The Workshop was attended by officers of various Competition Agencies and Non-Government Agencies (NGAs).

Dr. Sanjay Kumar Pandey, Adviser (Law), CCI welcomed the delegates. Chairperson CCI, Shri Ashok Kumar Gupta delivered the opening remarks. He appreciated the ICN UCWG co-chairs, *i.e.*, DG Comp, EU, JFTC Japan, and the French Competition Authority for organising the workshop and congratulated ICN for playing a pivotal role in stimulating deliberations on contemporary and pressing issues faced by ICN members. In his address, he underscored how technology and disruptive innovations are continually altering the contours of markets, transforming the ways of doing business, communications, and transactions t; bringing new issues and concerns in the competition policy discourse.

The two-day workshop touched upon a vast array of issues concerning unilateral conduct in digital markets. The plenary session deliberated upon some of the key issues pertaining to abusive unilateral conduct in such markets. The session was moderated by Mr. Mark Niefer, International Advisor, Antitrust Division, US Department of Justice. The panel of the session comprised of Ms. Madalina Radulescu, Antitrust Case Handler Officer, DG Competition, European Commission, Ms. Eleanor Fox, Professor of Law, New York University School of Law, NGA USA, Ms. Jyoti Jindgar, Secretary (in-charge) and Adviser (Economics), CCI and Dr. Alessandra Tonazzi, Director, International and EU Affairs, Italian Competition Authority. The discussion focused on the challenges faced by competition authorities while dealing with the novel business models and practices in digital market cases given the ever-evolving nature of such markets. The session emphasized on the need for dynamic approaches and novel tools to complement traditional enforcement mechanism while also stressing upon the need to develop a symbiotic relationship between



various competition authorities to bring out the best practices in dispensing their functions as regulatory bodies.

The second day of the workshop had three break-out sessions (BOS). Theme of BOS 1 was self-preferencing practices by dominant firms. As emerged from the session, self-preferencing has been one of the key areas of concern for antitrust enforcement in the digital platform markets. The session was moderated by Mr. David Rodriguez, General Coordinator of Market Investigations, Mexican Federal Economic Competition Commission. The panel consisted of Ms. Morag Bond, Joint General Manager, Digital Platforms Branch, Australian Competition & Consumer Commission, Mr. Vinod Dhall, Partner, Touchstone Partners, NGA India, Ms. Sayanti Chakrabarti, Director (Economics) CCI, Mr. Thomas Vinje, Partner, Brussels, Co-Chair, Global Antitrust Group, Clifford Chance LLP, NGA DG Competition, European Commission. The panel discussed the cases being dealt in their respective jurisdictions concerning self-preferencing issue by some of the big tech players and also discussed the challenges faced by competition agencies in assessing the conduct of such players. There was a broad consensus that even if the existing legal framework does not specifically mention self-preferencing as a competition issue, the law is broad enough to deal with this issue. The panellists also discussed about the possible theories of harm that can be developed while dealing with self-preferencing allegation by digital platforms.

The discussion in BOS 2 focussed on data related abuses, including obstacles to data portability and interoperability, refusal to give access to data, abusive use of third parties' data, *etc.* The session was moderated by Mr. Kelly Schoolmeester, Attorney, Technology Enforcement Division, US Federal Trade Commission and the panel comprised Mr. James Mancini, Competition Expert, OECD Competition Division, Mr. Marcus Vinicius Silveira de Sá, Coordinator of Merger and Antitrust, CADE, Brazil, Ms. Rachel Brandenburger, Visiting Research Fellow, Institute of European & Comparative Law, University of Oxford, NGA UK CMA and Mr. Miguel Moura e Silva, Board Member, Portuguese Competition Authority (AdC). The panel focussed their discussion on issues such as acquisition of excess data than what is legitimately warranted. They also touched upon data-related abuses and company's use of data and its privacy commitments. Issues related to data portability, use of competitively-sensitive data, and possible remedies in data related abuses.



BOS 3 contemplated over exploitative abuses and discriminatory treatment by digital market platforms across various jurisdictions. The session was moderated by Ms. Ginette Sofía Lozano Maturana, Chief Economist – Advisor, Superintendence of Industry and Commerce of Colombia. Dr. Assimakis Komninou, Partner, White & Case LLP, NGA DG Competition, European Commission, Mr. Yuichi Tominaga, Senior Section Chief, Inter-Enterprise Trade Division, Japan Fair Trade Commission, Mr. Frédéric Fustier, Deputy to the Chief Economist, French Competition Authority, Ms. Koren W. Wong-Ervin, Partner, Axinn, Veltrop & Harkrider LLP, NGA USA comprised the panel. The panel illustrated the exclusionary as well as exploitative conducts that have been examined by their respective authorities along with case laws. They touched upon the importance of conducting effects-based analysis in conduct cases and requiring actual evidence of harm and other statutory provisions for competitive assessment of cases.

Mr. Kamal Sultanpuri, Deputy Director (Law), CCI summarised the two days' proceedings and the workshop concluded with an update on the on-going UCWG projects as apprised by Mr. Hiroyuki Kishimoto, Senior Planning Officer, International Affairs Division, Japan Fair Trade Commission.

The workshop offered a platform for exchange of views and enforcement experiences amongst competition agencies and NGAs, enabling them to develop appropriate responses to deal with antitrust issues relating to abusive unilateral conduct in digital markets.
