
ANTITRUST GLOBAL SEMINAR SERIES

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Opening Remarks

1. Good afternoon Ladies and Gentlemen. It gives me immense pleasure to deliver the opening remarks in the inaugural session at this Anti-Trust Global Seminar Series, and speak to leading Indian and International competition lawyers. I hope this seminar will help the participants in updating themselves about the recent developments in the Indian competition law regime, particularly in wake of the challenges before competition authorities on account of new age markets driven by technology that has changed business models as well as consumption behaviour.
2. Let me also, at the outset, compliment the American Bar Association for this initiative and express my gratitude for inviting me. Friends, there is no doubt, that competition regimes have been growing stronger around the world. But at the same time competition authorities around the globe are faced with increasingly complicated issues that are striking at the established antitrust paradigms and beliefs. In a globalized world order, these antitrust global seminar series organised by the ABA provide a great platform for cross fertilization of ideas and discussions on such important issues facing regulators today.
3. As you may know the Indian Competition Act is a state-of-the-art Act and it is a product of the efforts of Indian lawmakers to liberalize the Indian economy and bring it at par with the best economies in the world. The main objective of competition law is to promote economic efficiency using competition as one of the instruments and for assisting the creation of a market responsive to consumers.

4. Enforcement of the Act is continuously evolving to meet the objectives of the Act. There has been a dramatic shift in the Indian economic development philosophy. In fact, the framers of the law were responding to times that were changing, when they drafted this modern piece of legislation. The Preamble of the Act provides an apt institutional context to the Competition Commission of India. It states and I quote '*An Act to provide, keeping in view of the economic development of the country..*' unquote. This is a rather unique endorsement of the link between the functioning of individual markets and the larger development imperatives of the country. This is also to affirm that competition is not, an end, in itself, but a means to achieve greater economic goals.
5. This year, CCI would complete 10 years of antitrust enforcement. CCI has strived to nurture a culture of competition in markets through credible antitrust enforcement and regular engagement with stakeholders. Its performance during this brief period has been noteworthy and since its inception, CCI has reviewed 995 antitrust cases, 636 merger filings and has held more than 650 advocacy events.
6. Though the numbers are important, but hidden behind the numbers is a sound body of jurisprudence that we have been able to develop in service to our nation's economic development and market realities. A fair degree of awareness has been created amongst the stakeholders with respect to the provisions of the Act, its scope and the remedies that it can provide.
7. Friends, we are witnessing the emergence of the "digital economy". The dawn of this new economy has brought with it alterations in the contours of market, transformations in the ways of doing business, ways of communication, and of

transactions. Digital technology is transforming markets at an unprecedented scale and pace. Business models, market access mechanisms, ways of communication and transactions are all being reshaped by digital mediation. The ongoing shift of markets towards a digital platform-centric configuration has opened up new opportunities while also posing new challenges for both market participants and regulators.

8. For consumers, the internet and new age markets have brought in transparency, wider choice, tailored offerings, and lowered search cost. For businesses, digital platforms have enabled penetration into new growth areas and have provided the technological foundation for innovation in products, delivery and business strategies. However, the network effects that allow digital platforms to serve the consumers as never before, provide data collection advantages to large incumbent platforms creating massive entry barriers.
9. These network effects can result in lock-in to such an extent that severely limits the possibility of potential displacement of market power. What we also notice is the integration within online markets leading to creation of larger online 'platforms'. Users are not paying money to these platforms, they are paying an implicit price in form of personal data. A platform with a large base of users is able to collect more data to improve the quality of service (for instance, by creating better algorithms) and, this way, to acquire new users, what is known as the 'user feedback loop'. On the other hand, it is able to explore user data to improve ad targeting, obtaining additional funds to invest in the quality of the service and attracting even more users, which is the 'monetisation feedback loop'. These loops can make it difficult for an entrant to compete against an incumbent with a large base of customers.

10. Thus, due to these features platform markets may be more concentrated than other industries, as most consumers would flock to larger players leaving small players competitively unviable. In this context, the challenge for regulators is to set a legal and regulatory framework for digital markets that supports innovation and also provides for appropriate safeguards to prevent harm to competition and consumer welfare.
11. The peculiarities of multi sided markets set them apart from the traditional market paradigm entrenched in the antitrust policy framework. In any case, the mere fact that one firm has entrenched market power in a particular industry is not condemned. To take such a stance would damage incentives to innovate, and would be a denial of the realities of market preferences. The way that market power is used would be subject to competition scrutiny. In cases involving dynamic competition, the Competition Commission tries to strike a balance between short-term static efficiencies and the longer-term gains that arise from innovation. Assessing technology sector issues, requires an understanding of the underlying technology and a comprehensive knowledge of market developments. A nuanced assessment, based on the facts of the case and the market and technology in question, is therefore the strategy, that the Commission has adopted in the analysis of antitrust cases involving digital economies in India.
12. The second issue that concerns the competition regulators is the competition concerns that emanate from the conduct of online players in the form of online vertical restraints. Online platforms improve information flows by bringing together information from different suppliers and product offerings. As customers are able to access and process information more quickly and more efficiently, their search cost goes down. These benefits notwithstanding,

certain kinds of vertical restraints imposed by the platforms on suppliers can raise specific competition concerns.

13. The distribution landscape is being altered rapidly and fundamentally. New distribution methods and models are emerging, affecting the traditional and existing mechanisms. Such developments may prompt enterprises to resort to exclusion of pure online players from distribution networks. Moreover, marketplaces may also distort the level playing fields for retailers by offering preferential terms to some companies engaged in retail to the disadvantage of other retailers. To understand these, the Commission intends to conduct a market study into the e-commerce sector in India.
14. On the horizontal level, the role of algorithms and artificial intelligence in collusion is an area that is increasingly being discussed in academic and policy forums. As more online players use Artificial Intelligence and pricing algorithms, will it create new ways to collude? How will antitrust law work when decisions are no longer made by humans but instead by machines? Can such decisions be imputed to humans? To deal with such challenges, which may potentially arise in the fast evolving digital markets, the CCI is constantly striving to remain abreast of the intellectual discourse on the subject besides attuning its investigative capacity. The Commission has constituted a Think Tank on Digital Markets comprising technologists, legal experts and economists who could help the Commission form nuanced and informed views on cases as well as gauge competition implications of policies and emerging technologies.
15. Here, I would like to highlight the role of anti-trust regulators in reviewing mergers in digital economy. Possible detriment to innovation is becoming an increasing concern in merger review cases in technology markets. There has

been a rapid ascent of "innovation effects" as a factor in merger challenges in matured jurisdictions. If the merging firms are each other's next best substitute or the merger is likely to affect diversity by eliminating an independent innovator, it may invite a closer scrutiny by the competition authority. Furthermore, dominant technology companies have been acquiring disruptive firms in adjacent markets that have the capability to rival the incumbent dominant enterprise in terms of its product offerings. Data is emerging as a key (intangible) asset that can drive certain acquisitions in the digital space. It is argued that transactions in digital markets are often driven by a motive to access the target's data. However, in case of such a transaction, the target may not have a huge asset base and at times even zero tangible assets and not significant turnover. In such instances, the target's value may not best be correlated to its sales. Accordingly, there have been recent concerns as to whether the existing merger control framework in India is sufficient to catch these transactions involving targets in the digital market with a low value of assets or turnover but are of competitive significance. Asset or turnover-based notification thresholds may actually not capture transactions that fall into a blind spot in the current legislative framework.

16. Before I conclude, let me reiterate that competition law attempts to preserve an economic environment in which innovation can flourish *inter alia* by prohibiting conducts that mute rivalry, impede entry or adversely affect the innovation-ecosystem. In innovation-driven markets, like in any other market, firms may have anti-competitive incentives and abilities to stifle new challenges to their hegemony. Thus, antitrust enforcement is not only necessary but has a significant role to play in innovation-intensive markets. Having said that, the Commission is fully conscious of the need to keep in

view the specificities of these markets and the innovation dimensions of the business conduct in question.

17. At the same time, antitrust should not be seen as a panacea to all sorts of issues ranging from privacy to data protection. Other policy regimes can offer more effective and appropriate responses.
18. We realise that the issues of data protection, privacy and consumer protection may be intertwined with antitrust in the case of digital markets, thus warranting coordination and consultation between the antitrust regulator and the other relevant regulators. There could be potential abuse of dominance cases, which might also involve a breach of data protection rules. There should be appropriate remedies, which address both anticompetitive practices and data harms. Such a need may arise in case of mergers and acquisitions as well. The Commission believes in a consultative and harmonious approach so that the goal of well-functioning markets can be achieved in conjunction with the sector regulator leaving no room for confusion for the stakeholders. The key is to ensure that there is consistency and continuity in our approach towards competition and regulation to avoid any unintended and undesirable conflicts and to provide a stable and predictable regulatory environment to the industry and well-functioning markets to the consumers.
19. During the past ten years of enforcement by CCI, the size of the Indian Economy has grown immensely and India is today amongst the top five economies in the World and poised to forge ahead. In this context, the Government envisages that Competition Law is strengthened, and recalibrated to promote best practices. In pursuance of its objective of ensuring that legislation is in sync with the needs of strong economic fundamentals and also in the wake of challenges posed by new age economy, the Government of

India has constituted a Competition Law Review Committee (CLRC) in September, 2018 to review the Competition Act. The challenges posed by New age economy and digital markets to Competition Authority is also under deliberation and a separate working group has been constituted to give recommendations to the Review Committee.

20. Let me conclude by saying that in the fast-moving world we live in, we need to constantly benchmark ourselves against the best, learn from other jurisdictions, and optimise the effectiveness of our enforcement. We at the Competition Commission of India constantly strive to achieve this.