

1. Good afternoon Ladies and Gentlemen. I am delighted to participate in this Inaugural Session at the launch of India Competition & Regulation Report 2019. I congratulate CUTS and CIRC for carrying out policy relevant research and publishing report on the status of competition and regulation in India ever since 2007, spanning across sectoral and institutional dimensions. A continuous effort to bring evidence from research to policymaking is important and this report is a great endeavour in that direction. As the theme of this year’s – *Digital Economy: Hitting the reset button on competition and regulatory governance*- suggests, this volume is dedicated to competition and regulatory issues for the fast digitalising economy. My felicitations to CUTS and CIRC on the timeliness and the topicality of this report.

2. Friends, we are witnessing the emergence of the “digital economy” characterised by disruptive innovation. In addition to the introduction of new products and business models, disruptive innovation seeks to remove inefficient intermediaries, increases consumer choice, forces incumbents to improve in order to compete effectively with the “disruption” and reduces information asymmetry, all of which lead to greater competition in the market. Indeed we are living in interesting times of ‘New Age’ Markets.

3. The digital sector in India, too has grown at a fast pace in the past few years and is slated to be on a high growth trajectory in the coming years as well. India’s digital economy generates about \$200 billion of economic value annually largely

from existing digital ecosystem.¹ This would increase to about five fold i.e. \$1 trillion by 2025. E-commerce in India, itself is expected to reach US\$ 200 billion by 2026 from US\$ 38.5 billion in 2017 propelled by the increase in mobile and internet penetration, fall in telecom tariffs and emergence of varied payment options.

4. While the on-going shift of markets towards a digital platform-centric configuration has opened up new opportunities, it has also posed new challenges for both market participants and regulators. Like any other market, digital markets are not impervious to anti-competitive conduct. While the competition law cannot and should not try and upend the economics that drive these markets, timely detection and appropriate intervention to correct anticompetitive practices is of key importance in these markets so that the markets remain contestable. *Keeping these markets competitive is one sure way to ensure inclusiveness in the Digital economy.*

5. 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. These network effects can result in lock-in to such an extent that the possibility of potential displacement of market power gets severely limited. What we also notice is the integration within online markets leading to creation of larger online 'platforms'. Another interesting feature is, that users are not paying money to these platforms, they are paying an implicit price in the form of personal data. A platform with a large base of users is able to attract more 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. Thus, due to these features, platform

¹ Ministry of Electronic and Information Technology. (2019). *India's Trillion Dollar Digital Opportunity*. Government of India.

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.

6. The peculiarities of multi sided markets set them apart from the traditional market paradigm. In any case, the mere fact that one firm has entrenched market power in a particular industry is not condemned. *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 long-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.

7. The Commission recently conducted a 'Market Study on E-commerce in India' to engage with industry and other stakeholders to get greater clarity on market developments, emerging impediments to competition, if any, and formulate the Commission's **enforcement** and **advocacy** priorities in relation to e-commerce.

8. The study points to an increased intensity of price competition across the sectors studied. Online trade has also led to greater price transparency. Sellers, service providers and platforms are tracking competitors' prices and adjusting the price levels in response so as to remain competitive. While the idea of dynamic

pricing strategy is not new, the internet has transformed the way price information is disseminated.

9. A broad and growing range of products, strong logistics and delivery network are bringing consumers on to the platforms. The indirect network effects and data-driven positive feedback loops contribute to the growing importance of online platforms and most sellers and service providers in India, both in goods and services, now depend on intermediary platforms to access consumers online as consumers increasingly rely on these platforms to search for and purchase products.

10. The key competition issues that emerged from the study pertained to alleged **lack of platform neutrality, unfair platform-to-business contract terms, exclusive contracts between online marketplace platforms and sellers and service providers, platform price parity restrictions and deep discounts**. Many of these issues would lend themselves to a case-by-case examination under the relevant provisions of the Act.

11. Nevertheless, *the bargaining power imbalance and information asymmetry between platforms and their business users are at the core of many issues* that have come up in the market study. Based on the findings, the Commission has recommended self-regulation by the e-commerce marketplace platforms with regard to search ranking criteria, collection, use & sharing of data, user review and rating mechanism, revision in contract terms and discount policy. The Commission under its advocacy mandate has urged the e-commerce platforms to improve transparency over certain areas of their functioning that will help in bridging information asymmetry, which in turn can positively influence competition not only on the platform but also between platforms. The objective is to promote competition on merits and to foster a sustainable e-commerce ecosystem in India.

12. In the absence of self-correction, the instrumentality of the law is always available with the Commission, but given our advocacy mandate, the market study identified certain areas of concern that we wanted to flag to the e-commerce platforms. Having said that, during the last one year, the Commission has sent three cases related to the digital economy for investigation after finding *prima facie* evidence of anti-competitive conduct. One related to the bundling of services by a major online search platform. The second investigation deals with issues of exclusive agreements, unfair platform to business contract terms, platform price parity restrictions in the accommodation service sector. The third, and the most recent, deals with issues of exclusive agreements, platform neutrality and deep discounting in smartphone e-commerce.

13. I would also 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.

14. 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. In such a transaction, the target may not have a huge asset base and at times even zero tangible assets and also no significant

turnover. In such instances, the target's turnover may not correctly reflect its value. 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. Hence, it is our endeavour to introduce an enabling provision in the law so that those transactions which fall under the *de minimis exemption* may get referred to CCI if their deal size is above a certain threshold. The deal value threshold is also among the recommendations made by the Competition Law Review Committee that was constituted to review the adequacy of the existing statutory architecture of competition law.

15. The Committee also reviewed the existing provisions of the Act to find out whether digital markets would require a new antitrust dispensation or the existing framework of the Competition Law is robust enough to deal with the issue. The Committee held that the existing principles and rules of competition law are sufficient to address competitive practices emerging in the digital space. However, certain recommendations were made by the Committee to make the Act sounder. These recommendations along with introduction of deal value threshold also included covering hubs in the assessment of hub and spoke cartels and widening the scope of anti-competitive agreements to cover all kind of agreements. Further, in the interest of speedier resolution of cases, which is particularly critical in the context of fast changing digital markets, the Committee has recommended additional enforcement mechanisms in the form of Settlement and Commitments.

16. Antitrust should *not be seen as a panacea* for all sorts of issues ranging from privacy to data protection to income inequalities. There are many issues, emanating

in these *New Age Markets* which certainly require some form of policy response. 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.

17. 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.

18. 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.

19. We in the Commission are aware that the consumers benefit from competition through lower prices, better quality and a wider choice of new or improved goods and services. Therefore, the CCI will continue to focus on those types of conduct that are harmful to consumers. This regulatory philosophy is in line with what the Raghavan Committee report had observed. The Committee recorded its view that India was in transition from being a protected economy to becoming a liberalised economy in a globalised world. A modern Competition Law was required for achieving efficiency in resource use and maximising consumer welfare. This mandate has been clearly spelt out in the Act itself.

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.
