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Address: Emerging Competition Landscape

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Ladies & Gentlemen

1. As we are all aware, Digitisation has transformed and revolutionised the Indian economy. India is now the second fastest digitising economy amongst the 17 leading economies in the world.¹ India's digital economy generates about \$200 billion of economic value annually, and this would further increase to about five fold i.e. \$1 trillion by 2025. Indeed, the new economy with its extensive use of digital technology has outcompeted the **pipeline-based** economy by mobilizing resources and scaling at a pace, which traditional firms cannot match.

2. However, technology now allows these firms to compile and refine information into a more useful finished product allowing them to protect their position by creating an ecosystem comprising multiple portals among which users can easily switch. Building of such ecosystems intensifies the likelihood of increased entry barriers, market concentration and reduced innovation.

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

3. These firms play an intermediation role between various enterprises; have access to large and unique datasets; and are able to move into adjacent markets either through acquisitions or by having access to sensitive business data of other market players on their platforms. This situation is complicated further if the entity controlling a platform also transacts upon it, thereby operating in dual capacity. These characteristics of such online platforms have corresponding concerns for SMEs listed on such platforms as well.

4. In the past few years, a few digital ecosystems and players have emerged as **gateways to the internet** with bottleneck power. They act as a first touch point for a consumer's transaction journey and it is through their ranking logic of search results and advertisements, that an online firm's/seller's visibility is determined.

5. At the same time, we all have enjoyed the services provided by such ecosystems. They integrate a wide range of products and services, which can lead to efficiencies and reduced prices. It also enhances consumer experience as it offers demand-side synergies across a bouquet of products and services and creates convenience. Clearly, the effect **is ambiguous** and makes the application of competition rules extremely challenging.

6. Application of competition rules requires some out of the box thinking. Finding an **optimum solution** that would help in preserving, restoring and facilitating competition in the digital space becomes fundamental here, without compromising on consumer welfare. The antitrust field, which is a combination of economic doctrines and legal principles, can help in designing analytical frameworks and insights on the competitive dynamics of business ecosystems for regulating the same.

7. Another issue with digital markets is how to account for data related effects. Data has acquired crucial importance for gaining market power on the internet. The challenge is to determine whether the data sets so integrated are unique, complementary and cannot be replicated. Mere accumulation of data doesn't confer market power as long as it is non-rivalrous and there is free flow. Although collection and control of data are not *per se* anti-competitive, however 'data sharing' as a merger remedy or remedies that encourage **interoperability and portability** may become necessary especially when the merger combines specialized user data.

The Competition Act empowers the CCI to impose remedies, both in case of mergers and acquisitions as well as in case of anti-competitive practices such as abuse of dominance. Specifically, behavioural remedies are now being widely put to use in the digital sector and may include provision of access to data in order to curb data-polies.

8. Interestingly unassayed control over data by these **gatekeeper firms** comes due to weak and **loose privacy policies** that compromise individual privacy to a level that they are able to collect troves of data for **unfair** commercial exploitation. The anti-trust law framework is broad enough to address the exploitative and exclusionary behaviour arising out of privacy standards, of entities commanding market power. Privacy can take the form of non-price competition. Lowering of privacy protection by dominant enterprises could be construed to be an abuse of dominant position as low privacy standards imply a reduction in consumer welfare. Lower data protection can also lead to the standard legal category of exclusionary behaviour, which undermines the competitive process. Tying with other digital products further strengthens the data advantage enjoyed by the dominant incumbent by **cross-linking the data collected across**

services, creating a vicious circle. CCI is closely scrutinizing such data privacy concerns.

9. We also acknowledge that sound and informed decision-making needs a thorough understanding of the nature of competition in the digital markets. **Market studies** are an important tool **for an evidence-based approach to antitrust** policy and for providing a comprehensive understanding of the market dynamics. For us, market studies inform enforcement decisions and aid our advocacy efforts.

The Commission has therefore included Market Studies as an important **constituent of its toolkit**.

10. Most of our recent market studies, have been prompted by changes in competition landscapes due to technological advancements and digitisation of markets. For instance, the market study on e-commerce was launched as the Commission had been receiving lot of cases relating to the sector. What also became apparent in the course of the enforcement activities was that the **distribution architecture** for a large number of goods and services was undergoing a shift at a rapid pace. A need was felt to develop an understanding of these changes from all relevant perspectives.

11. The study findings showed that imbalance in bargaining power, information asymmetry between platforms and their business users and lack of platform neutrality underpinned most of the emerging issues in e-commerce. While these issues merit case-by-case assessment under the relevant provisions of Competition Act, bargaining power imbalance and information asymmetry between e-commerce marketplace platforms and their business users were found to be at the core of many issues. Thus, without a formal determination of violation of competition law, we felt that

improving transparency over certain areas of the platforms' functioning could reduce information asymmetry and could have a positive influence on competition outcomes. These infirmities, were more amenable to be addressed through **non-enforcement tools**. So, under our advocacy mandate, we urged the e-commerce platforms to take self-regulatory measures to improve transparency over certain areas, such as search ranking, collection/use/sharing of data, user review mechanism, revision in contract terms and discount policy.

12. We all know that telecom industry lies at the core of the digital revolution. After completion 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 enthused vertical integration in telecom industry across the infrastructure and content value chain and led to forging strategic partnerships between telecom operators and digital solutions providers including content providers, e-commerce platforms, digital payment platforms and other cloud-based technology solutions.

13. The challenge for us here is to isolate instances of market abuse to the detriment of competition. Therefore, whether the service provider indulges in discriminatory treatment has to be ascertained on a case by case basis and going forward the role of the Competition Authorities will increase in assessing the impact of these newly emerging business models with telecom operators acting as platforms to various applications ranging from entertainment to retail to payment systems, etc.

14. In light of the move towards convergence, adherence to **net-neutrality principles** will be instrumental in ensuring healthy

competition as technology convergence drives further integration across the value chain. From a competition standpoint, there is a parallel to the principle of search neutrality that bars search engines from promoting their own business in response to queries. The CCI has to be vigilant that such vertically integrated infrastructure providers do not indulge in actions that could or have the potential to foreclose entry in the application layer. While net neutrality ensures that networks are neutral to platforms, the platforms/operating systems dominated by a few players have to be open, inclusive and non-discriminatory.

15. Digitization is here to stay and its indispensability for human development is unquestionable. The government has already recognized the paybacks of a digital economy and has aimed to improve online infrastructure, increase internet connectivity and make India digitally empowered. It is our duty as a competition authority to assist this endeavor by promoting competitive digital markets both through enforcement and advocacy. We assure you that our approach in digital markets would be carefully crafted, nuanced and minimalist so that we don't lose the efficiencies or stifle the innovation incentives of the digital firms. We do not want to throw the baby with the bathwater! With these words, I end my address and thank the organizers particularly Mr. Samir Kochar for giving me this platform to share my views.