

Opening Remarks by Mr. Ashok Kumar Gupta, Chairperson, CCI
in
ICN UCWG Workshop
22-23 March 2022

Distinguished Participants

Eminent Speakers

Ladies and Gentlemen

A very good evening from India to you all!

1. It gives me immense pleasure to be with you, albeit virtually, in this workshop of ICN Unilateral Conduct Working Group *on Types of Abusive Unilateral Conduct in Digital Markets (Traditional and Novel Issues)*. The Competition Commission of India is delighted to host UCWG workshop 2022. I would also like to thank all the attendees from fellow competition authorities and other delegates from around the world for being with us today.

2. Had it not been for the pandemic and the restrictions imposed in its wake, it would have been my pleasure to meet you in person and it would have been our privilege to extend our hospitality in India.

3. Before I share my opening remarks, I would like to place on record my sincere thanks and appreciation for ICN UCWG co-chairs, i.e., DG Comp, EU, JFTC Japan, and the French Competition Authority for organising this workshop.

4. In the competition law community, ICN has established itself as a specialised platform for exchange of views and sharing of learnings, knowledge, and experiences. It facilitates the adoption of best global

practices, principles, and procedures by agencies. Workshops and events like this play an important role in stimulating deliberations on the contemporary and pressing issues faced by ICN members. I find the theme of this workshop to be very topical and touching upon a vast array of issues concerning unilateral conduct in digital markets. The number of registrations and attendees testify to the relevance of the event amongst the participants.

5. Friends, the past two years of the pandemic have posed unprecedented challenges to us on multiple fronts. Never before, in living memory, have we confronted a crisis of this enormity. However, businesses as well as governments rose to the occasion and took a slew of measures to bring life back to normal, including the effective and increased usage of technology, more particularly, digital products and services.

6. Rapid digitisation was already changing the way the world economy operates, but the pandemic accelerated this, and the trend is likely to continue post-pandemic. In today's world, we are witnessing that every possible market, be it retail, e-commerce, food, groceries, payments, deliveries, entertainment, wealth management, trading, healthcare, education, or utilities, is undergoing a digital revolution. Technology and disruptive innovations in the digital economy are continually altering the contours of markets, transforming the ways of doing business, ways of communication, and ways in which transactions are carried out.

7. Due to such significant change and meteoric expansion of digital products, services, and platforms, digital markets have attracted the

attention of competition agencies across the world. While, on the one hand, digital incursions foster competition by creating more opportunities, bringing transparency to online intermediation and reducing search cost for consumers, on the other hand, the increasingly technology-laden economy is bringing new issues and concerns to competition policy discourse.

8. Not very long ago, it was widely believed that market power in digital markets is rare and fleeting, and that any intervention would entail a high risk of discouraging innovation. However, the recent trend in digital markets indicates that dominance in these markets tends to be durable and entrenched. The presence of certain characteristics, such as network effects, may prevent a newcomer with superior technology from replacing an established incumbent. What may further help consolidate the incumbents' market position in digital markets is the scale advantage that is derived from the wealth of personal user data amassed over a period of time. Sticky consumer behaviour, combined with a lack of data portability, increases switching costs and may therefore accentuate market concentration and the creation of impermeable entry barriers.

9. Consequently, in recent years, there has been a steady rise in cases emanating from new-age markets which range from across the verticals such as search engines, online marketplace platforms, online travel, food aggregators, cab aggregators, and social networking. From a competition standpoint, these cases involve diverse issues like search bias, self preferencing, exclusive arrangements, predatory pricing, deep discounting, and leveraging.

10. Given the very fast evolution of digital markets, the challenge before competition authorities is to stay ahead of the curve and be agile in identifying and addressing competition concerns. Agencies also need to craft remedies suitably for effective market corrections. This is why events such as this are important, as they allow enforcers and practitioners to brainstorm emerging issues and evolve approaches.

11. This would presuppose a robust understanding of the underlying markets and developments taking place therein. To this end, CCI commissions market studies from time to time, to gather information about structural infirmities, consumer behaviour, market practices, stakeholder perspectives, regulatory architecture governing the sector, and their implications on competition. Such studies offer an opportunity to assess competition beyond the individual behaviour of firms and enhance knowledge about the sector or an issue, which is novel or fast moving. Thus, market studies provide a wider ambit to understand the characteristics of the market and industry practices that may give rise to anti-competitive concerns. Most of the recent market studies have been prompted by rapidly changing competition landscapes owing to technological advancements and digitisation of markets, for instance, the e-commerce study and the telecom study.

12. Let me also share the key findings of these studies commissioned by CCI. The market study on e-commerce revealed bargaining power imbalances and information asymmetry between platforms and their businesses as emerging issues in e-commerce. Under its advocacy mandate, CCI urged e-commerce platforms to institute a set of self-regulatory measures over certain areas such as search ranking,

collection/use/sharing of data, user review mechanisms, revision of contract terms, and discount policy.

13. The telecom study brought out new issues and challenges emerging from the competition law perspective, with the market moving towards data-based applications and services and technology-led convergence across the value chain. Competition concerns arising out of data were flagged, and it was highlighted that the antitrust law framework is broad enough to address the exploitative and exclusionary behaviour arising out of privacy standards and entities commanding market power. The study accentuated the need for a harmonious regulatory environment, focusing on strengthening cooperation among sectoral regulators and the competition authority.

14. Against this background of present and potential issues posed by the digital markets, it is important to deliberate on the remedies and likely obstacles in their implementation.

15. One of the questions before regulators is whether the traditional antitrust toolkit will be able to meet the legal and analytical requirements of the digital markets. While the practices in digital markets that have raised concerns may not be fundamentally different from those already dealt with in traditional markets, the specificities of the digital markets have necessitated a dynamic and versatile approach in the application of their legislative instruments. The attendant complexities may require the adoption of new frameworks for the assessment of anti-competitive behaviour. What is needed to address new challenges is to quickly acclimatise to the evolving set-up and prepare not only for novel issues

arising therefrom but also explore the possibilities of quick and effective redressal, either with the resources at our disposal or by effectuating a new antitrust dispensation.

16. In rapidly evolving and dynamic markets, the regulator's task is to be nuanced as per 'intelligibly' moving targets. Therefore, I believe that this is all the more reason to call for deeper international cooperation in the calibration of efforts, given the limitless character of digital markets. We must remember that the regulator has the perennial task of oxygenating the markets by striking the right balance to ensure efficiency and innovation in markets, while markets remain free from anti-competitive practices.

17. In conclusion, I would like to say that, regardless of our individual views on the challenges, potential solutions, and obstacles to implementing them, I am sure we can all agree that such discussions are important and we can always do better by learning from each other. Looking at the rich agenda of the workshop, I am hopeful that, over the course of the two days, participants will stand to gain from each other's enforcement experiences and enlighten everyone regarding evolving, adopting, and adapting the tools and techniques required to address the issues in digital markets.

18. Friends, I sincerely hope that the deliberations at this workshop would provide a fillip to the approaches and mechanisms in dealing with antitrust issues relating to abusive unilateral conduct in digital markets.

19. I wish the workshop a grand success.

Thank you very much.