

Speaking Note

8th UN Review Conference on competition and consumer protection

Strengthening consumer protection and competition in the digital economy

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The Covid-19 has led to a consensus that digitalisation is a must for consumers to stay safe and for businesses to sustain and survive. Thus digitalisation of the economy is now a necessity. However, digital economy has some special characteristics, which require careful policy responses, including competition policy responses.

Some distinguishable characteristics of digital economy are: Increasing returns to scale; Economies of scale; Multi-sidedness; inter-connectedness; Massive data collection and use; network effects etc.

We are also noticing that big platforms as gatekeepers of the digital economy are *de facto* regulators, and also that those who control digital eco-system, corner most gains out of the digital economy. In addition, while digitalisation is deepening we are also witnessing growing inequality within and between countries.

To add to this phenomenon is the economic downturn that countries have suffered due to pandemic lockdowns, and thus economic recovery is their prime goal. 'Country First' approach seems to be the global thought process of governments, leading to de-globalisation. Creating jobs opportunities is in the core of such policy approach.

In this backdrop, we are discussing how to strengthen consumer protection and competition in the digital economy. Any measure to strengthen

competition would have to also lead to economic recovery and more job creation in order to remain relevant to the larger policy goal.

For instance, on-boarding MSMEs and farmers on e-commerce platforms could lead to economic recovery and job creation. Similarly, penetration of education and health services using digitalisation would engender inclusiveness in the economy and development of human capital.

Since, big tech giants are the gatekeeper and *de facto* regulators in the digital economy, first and foremost principle that they need to adhere is what is called as 'platform neutrality'. Platform neutrality refers to non-discriminatory treatment by the platform towards all the sellers that are linked to it. This the crux that has also been flagged in the US Congress Subcommittee's digital investigation report and also one of the main concern for which the EU is looking for new competition tools.

In my opinion, a suitable *ex ante* P2B (platform to business) regulation would be helpful to ensure platform neutrality and prevent arbitrariness of platforms. If platform neutrality is not adhered, there would be market failures impacting both businesses and consumers and may have to shut shop.

Another part of the solution could be enhanced 'access to data' by multiple market players. Data seems to have the characteristics of infrastructure and enhanced access to it would promote competition. In this context, data portability and interoperability also becomes important to counter the winner-takes-most phenomenon.

Competition advocacy need also be towards discouraging de-globalisation tendencies, including 'data localisation' and 'creation of national champions' as digital strategy. Such digital strategy is at the cost of

domestic competition. However, countries can press such policies in guise of economic recovery and country-first approach.

Also advocate for open access and decentralised digital marketplace, such as Beckn protocol. Similar to how internet was created as a decentralised platform, with the aim of giving equal access to all.

For effective enforcement of competition law in digital economy, the following pointers can be helpful:

- It is no longer viable to look at companies and economies as dominant only from the perspective of market share or revenue, 'data' and 'user base' are factors which need to be considered to assess dominance and abuse thereof.
- Revisit the traditional concept of 'consumer welfare' and how the same is assessed. If we continue to assess consumer welfare only in terms of price, assessment of digital economy under competition law becomes difficult.
- Rigorous review of mergers and acquisitions (M&As) in digital space.
- Businesses also indulge in predatory pricing and deep discounting, which is witnessed most in the digital space.
