

CUTS and CIRC

World Competition Day

Digital Economy, Innovation and Competition

5th December 2018 | 1800 – 2030 HRS | India International Centre, Delhi

Opening Remarks: Dr. Arvind Mayaram, IAS(R), (Former finance secretary of India), Chairman, CUTS Institution for Regulation & Competition (CIRC).

Digital Economy is a major driver of economic growth in the 21st century and is fueled by the rapid emergence of digital innovations. Digital markets are generally perceived to benefit consumers through more choices, lowered prices, increased transparency and improved product quality, they also present novel and complex competition concerns such as potential to disrupt established practices, pose entry barriers, exhibit market concentration, etc. However, being characterised by Big Data, platform-based business modes, multi-sided markets, network effects and tipping, user feedback loops, common institutional investments, etc, it becomes pertinent to deliberate upon the contemporary competition law challenges faced by the innovation-led digital economy.

These include identifying the role of competition policy/law and authorities in shaping the digital economy, ascertaining the suitability of the traditional competition law tools to deal with the digital economy and disruptive innovation, and most importantly, advocating optimal regulation, which adequately protects innovation and simultaneously enhances competition and consumer welfare.

Video Address: Pradeep S Mehta, Secretary General, CUTS International

Celebrating World Competition Day was noted to be one of the important advocacy campaigns spearheaded by CUTS International since 2010. The aim of the campaign was highlighted to ensure that consumers from across the world realise the potential benefits from an effectively implemented competition regime, and also play their role in making competition regimes work worldwide. The significance of the date, that is, December 5, was also mentioned, as the day when United Nations Conference on Restrictive Business Practices approved the UN Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices in 1980.

It was further iterated that since its conceptualisation in 2010, the initiative has picked-up momentum, and has been supported by as many as 30 competition

agencies across continents – different parts of Asia, Africa, Europe and Russia. The role played by non-government agencies (NGAs) and international organisations was also pointed-out.

Session: Digital Economy, Innovation and Competition

Chair & Moderator: Dr. Arvind Mayaram, IAS(R), (Former finance secretary of India), Chairman, CUTS Institution for Regulation & Competition (CIRC).

Speakers

1. Dhanendra Kumar, Former Chairperson (2009-2011), Competition Commission of India.
2. Geeta Gauri, Competition Commission of India Member, Economic Division.
3. Sanjeev Bikhchandani, Executive Vice-Chairman, Infoedge (Naukri.com).
4. Mukund Kulashakaran, VP Business Development, Urban Clap.

Summary of Discussions

Discussions began by laying out the relation between Competition Law, Digitalisation and Innovation. In today's world, the capacity to alter human behaviour is humongous and one notable way to do it is through capturing and processing the data, which enabled data driven innovation. Consequently, the need to debate monopolisation of data was felt especially in light of data being considered as the modern oil of the economy. With an intention of establishing a relation between data and competition law, the example of e-Commerce giants were discussed, elaborating the reasons behind their rapid growth in world markets. It was highlighted that many such companies, in addition to being online retailers of products, have expanded in several sectors like marketing, credit lending, auction house, book publishing, hardware manufacturing, etc. Emphasis was given on their ability and access to resources for having control over data globally, making it easier for them to add new services and provide tough competition to incumbents. Their disruptive and innovative business models had made it easier for them to leverage one business to enter another, and establish their dominance in whichever market they enter, and all this is possible only because of the huge amount of data they own.

Therefore, to keep pace with market dynamics in the present as well as future and ensure existence of healthy competition, there was a need to have proper regulations.

It was clarified that sensible regulation will not cause harm to businesses; on the contrary, it would help business. 'Ethical competition' was considered essential, because it is good for competitors, consumers, as well as the economy. Another important point that was highlighted, pertained to disproportionate amount of capital available with foreign players as compared to Indian players. Most risk capital in India is foreign capital. Also, one of the fears in the market that requires attention is predatory pricing, which is again much nuanced.

The Indian Competition Act was considered to be not dynamic enough to take the digital economy into account. Issues of switching costs, venture capital funds, moribund capitalism, multi-sided markets, etc were discussed in this regard.

Disruptive innovation is always happening and large firms are also coming to India. These firms could be large but they are also coming into a market that is still emerging. Along with fears there are also some positive aspects; so we need to have a nuanced approach towards it.

Caution was made against 'cartels' in a data economy and a network economy, along with 'patents and royalty pricing' because these issues provided dominance over others, which could lead to abuse of dominance, eventually to kill the positive side of the competition.

The need for framing and implementing optimal regulations was touched upon. In the current scenario, not regulating digitalisation can cause serious harm, but we need to keep in mind the advantages that we are getting out of it and make sure that we do not over-regulate it and in return harm ourselves.

Key Takeaways

The following points may be noted to be the key takeaways from the panel discussion.

- Digitalisation will play an essential role in future and it surely has its advantages, but we need to regulate the data in an organised manner to prevent any unfairness or misuse of that data in future.
- Digitalisation is taking place at a rapid growth rate and the market is growing in a very dynamic manner, but our laws do not seem to be able to keep pace with the growth rate of the digital market. Hence, we need our laws to evolve in such a manner that it can keep pace with these dynamic changes.

- Digital economy is growing very fast and like other economies, it is based on a market that, in this case, is digital market. Since a digital market is, after all, a market place, it follows the general principles of the market that means that if a company wishes to stay at the top, it is going to need continuous innovation. A healthy competition in the market will make sure that the company's interest does not go against its customers' interest.
- Digital economy is rapidly changing. Currently we are looking at this change as grown, but however digitalised we get, the human aspect still remains in the market. Therefore, the malpractices that existed in the market earlier can also develop in the digital market. Our main concern at this point of time should be to prevent these malpractices from taking place because if they happen in a digital market, the effect will be huge and very rapid and difficult to control. Thus, the role of regulation in a digital economy is very important and necessary.
- In the present situation not regulating digitalisation can cause genuine damage, but we have to remember the focal points that we are receiving in return and ensure that we do not over-manage it and consequently hurt ourselves.
