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STANDING COMMITTEE ON FINANCE
(2022-2023)

SEVENTEENTH LOK SABHA

MINISTRY OF CORPORATE AFFAIRS

ANTI-COMPETITIVE PRACTICES BY BIG TECH COMPANIES

FIFTY THIRD REPORT

LOK SABHA SECRETARIAT
NEW DELHI

DECEMBER, 2022/ PAUSHA, 1944 (SAKA)

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Presented to Lok Sabha on 22.12.22

Laid in Rajya Sabha on 22.12.22

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COMPOSITION OF STANDING COMMITTEE ON FINANCE (2022-23)

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INTRODUCTION

I, the Chairperson of the Parliamentary Standing Committee on Finance, having been authorized by the Committee, present this Fifty-third Report on the subject 'Anti-Competitive Practices by Big Tech Companies'.

2. At their sitting held on 28 April, 2022, the Committee took evidence of the officials of the Ministry of Corporate Affairs, Ministry of Electronics and Information Technology and Competition Commission of India. On 19 May 2022, the Committee heard the views of representatives of hospitality, restaurants and travel agents associations, digital media and newspaper associations *viz.* The Federation of Hotel and Restaurant Association of India (FHRAI), Digital News Publishers Association (DNPA), Alliance of Digital India Foundation (ADIF) Newspapers Association of India (NAI) and Confederation of all India Traders (CAIT). The Committee further on 21 July, 2022 heard views of industry stakeholders from the representatives of PayTM, Ola, MakeMyTrip India Pvt. Ltd, Zomato, Oyo, Swiggy, Flipkart and All India Gaming Federation (AIGF). The Committee again had the oral evidence of Ministry of Corporate Affairs and Competition Commission of India on the subject and also heard the views of representatives of Alliance of Digital India Foundation (ADIF) on 28 July, 2022. The Committee then on 23 August, 2022 interacted with the representatives of various Big Tech Companies *viz.* Amazon India, Apple India, Facebook India, Google India, Netflix India, Twitter India and Uber India.

3. The Committee considered and adopted this report at their sitting held on 19 December, 2022.

4. The Committee wish to express their thanks to the officials of the Ministry of Corporate Affairs, Ministry of Electronics and Information Technology and Competition Commission of India and representatives of The Federation of Hotel and Restaurant Association of India (FHRAI), Digital News Publishers Association (DNPA), Alliance of Digital India Foundation (ADIF), Newspaper Association of India (NAI), Confederation of all India Traders (CAIT), PayTM, Ola, MakeMyTrip India Pvt. Ltd, Zomato, Oyo, Swiggy, Flipkart, All India Gaming Federation (AIGF), Amazon India, Apple India, Facebook India, Google India, Netflix India, Twitter India and Uber India for appearing before the Committee and furnishing the requisite material and information which were desired in connection with the examination of the subject.

5. The Committee also wish to express their thanks to the Stakeholders/Organisations for providing their views/suggestions against the Press Communiqué on the aforementioned subject.

6. For facility of reference, the observations/recommendations of the Committee have been printed in bold at the end of the Report.

New Delhi	**Shri Jayant Sinha**
19 December, 2022	**Chairperson,**
28 Agrahayana, 1944(Saka)	**Standing Committee on Finance**

REPORT

PART I

Chapter-I

Digital Markets

Background

1.1 The world is digitizing rapidly. As a result, in the past few decades, novel and powerful business models have evolved in the digital ecosystem. The widespread adoption of Information and Communication Technology (ICT) along with the growth of multitudes of digital companies has led to distinct digital markets, comprising millions of interacting participants, which are often interconnected across the ecosystem. These digital markets are present across the national and global economy in most sectors from healthcare to finance from transportation services to education.

1.2 It is also abundantly clear that the underlying economic drivers of digital markets inevitably lead to the rise of a relatively few leading players. These leading players are collectively referred to as Big Tech companies. The rise of Big Tech is due to the fundamental difference in the way digital markets operate, as compared to traditional markets. Digital markets are driven by massively powerful increasing return to size economies. These increasing returns result not just from the traditional scale and scope effects, but also dramatically powerful learning and network effects. Due to these powerful increasing returns to size, digital markets often tip quickly (within 3 to 5 years) to winner-take-all monopolistic outcomes. On the other hand, traditional markets tend to have diminishing returns to size, leading to strong competition among multiple players. Thus, while traditional markets tend to be fair and contestable, digital markets quickly result in limited fair competition. Moreover, leading players in one digital market can quickly unlock these increasing return effects in adjacent markets as well. Since digital markets do not have sufficient competition, they also are prone to significant anti-competitive behaviour by leading players.

Digital Markets vs Traditional Markets: Defining Characteristics

1.3 Digital markets are essentially different from traditional physical markets. In a traditional market, as the size of a business entity increases, its returns increase only up to the maximum efficiency point, or the equilibrium point, and then continue to decrease. Another way of describing this is to highlight that marginal costs increase rapidly with size for traditional physical markets. This is referred to as diminishing returns to size. With diminishing returns, there is a competitive disadvantage to getting bigger and that leads to a competitive equilibrium and welfare-optimizing outcomes. On the other hand, digital markets have increasing returns to size, driven primarily by learning and network effects. Simply put, digital businesses tend to have rapidly diminishing marginal costs as they grow, so scaling quickly is the best strategy. The bigger you get, in digital markets, the more competitive you are. This results in winner-take-all market outcomes. Thus, digital markets often 'tip' quickly and one or two winners or leading players emerge in a short span of time.

1.4 Increasing Returns to Scale: In any digital market, as the size of the firm increases, so do the returns, with rapidly decreasing marginal costs. In other words, once a search engine or a messaging application has become fully functional, it can cater to millions of new users, without a proportional increase in its costs. With increasing returns to scale, competition between two firms producing the same product will not allow them to cover their costs. Indeed, were they to cover their (total) costs, they would have to price above the cost of serving an additional consumer (the marginal cost) and each of them would find it profitable to lower their price to capture the other's clients. As a consequence, no firm, unless armed with a much superior and cheaper technology, would want to enter a market dominated by an incumbent, even when this incumbent is making large profits (EU Report, 2019).

1.5 Network Effects: An 'incumbent platform' continues to grow, also due to network effects. As the number of users on a platform grows, so does the utility of every user of that platform. The larger platforms, with more number of users may provide increased efficiency to all its users. But this leaves space for only a small number of platforms in the market. A classic example of this is the way social networking and messaging apps work. A new user would only want to join that

platform that already has a high number of users. This gives the incumbent platform an advantage as follows: Due to network externalities, there is always a difficulty for users to coordinate migration to a new platform. No individual user would want to migrate to a new platform. Even if they would be better off on a different platform, that would not happen unless there is a mass movement of users from the leading platform to the new platform.

1.6 Winner-take-all markets: The combined effect of network externalities and increasing returns to scale often results in a winner-take-all market. Such markets lead to significant competitive conduct issues. The leading players in a market can systematically and strategically leverage their position in the market to cut off innovative start-ups, thereby eliminating a competition. This creates entry-level barriers for an emerging firm. Moreover, it leads to the entrenchment of the leading firms market position and strength. These issues emerged in the various sittings of the Committee, as well as in the different competition cases of the Commission.

1.7 First, monopolistic players can always use their pricing power to extract rents or other value (such as precious usage data) from consumers. Second, winners can stifle dynamic innovation by buying out possible competitors that are much smaller or by not engaging in sufficient innovation themselves. Third, winners can use their advantage in one market to gain competitive advantage in other markets through bundling, tying, and other unfair behaviours. Finally, winners can corner the market for valuable inputs (such as talented people) making it difficult to compete against them.

1.8 These winner-take-all markets also present a particular challenge to policy-makers. Typically, winners emerge within 3-5 years after the market starts to develop. By the time policy-makers can react or anti-competitive behaviours can be adjudicated, markets can tip in one direction and a winner emerges. Therefore, competitive behaviour needs to be evaluated *ex ante* before markets end up monopolized.

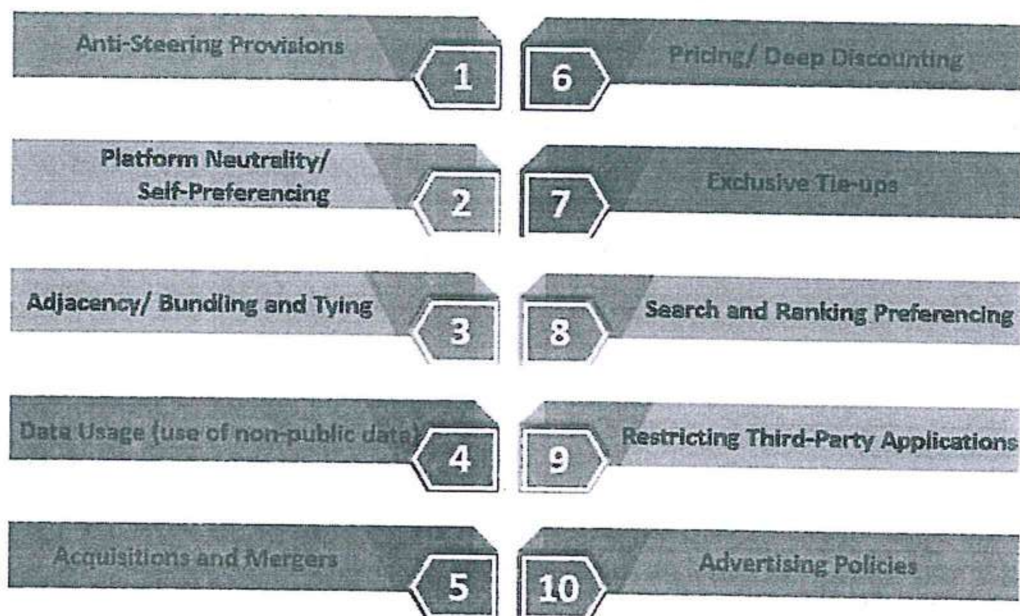
Anti-Competitive Practices (ACPs) in Digital Markets in India

1.9 The Indian digital ecosystem is expanding rapidly. Being the fifth largest, and the fastest growing economy in the world, our digital markets are huge. India is expected to have 907 million internet users by 2023. India's consumer digital economy is expected to become a US$ 1 trillion market by 2030, growing from US$

537.5 billion in 2020, driven by the strong adoption of online services such as e-commerce and ed-tech in the country. As of June 8, 2022, the Government e-Marketplace (GeM) portal served 10.35 million orders worth Rs. 2,58,359 crores (US$ 33.07 billion) to 60,632 buyers from 4.56 million registered sellers and service providers. These statistics indicate not only the size and potential of the digital sector in India but also, towards the need to make sure that it operates within a truly competitive ecosystem, ensuring utmost efficiency and consumer welfare.

1.10 The winner-take-all markets of the digital economy prompt 'winners' to resort to certain actions that discourage competition. Based on the submissions received by the Committee on part of the various stakeholders, a variety of concerns have been brought to the forefront. Apart from the various submissions, these issues have also been identified in the numerous orders by the Commission, particularly under Section 26(1), of the Competition Act, 2002 against firms operating in digital markets.

1.11 Based on these submissions, the following ten ***Anti-Competitive Practices (ACPs)*** have been identified. Competition law may largely address these ACPs in order to ensure market efficiency as well as fair competitive conduct.



I. Anti-Steering Provisions

1.12 Prominently associated with 'App stores', anti-steering provisions prevent their business users, for instance app publishers, from moving out of the platform and using other alternatives for payments. The issue lies in the fact that this does not allow the user any choice of alternatives which may cost him less and provide a better interface. By mandating the use of their own payment system, App stores eliminate possible competition from other payment applications. Worldwide, App stores have been at the centre of many anti-competitive cases, particularly in regard to their payment mechanisms.

1.13 Google's Play Store and Apple's App Store are the major players in this marketplace and both have been found to have anti-steering provisions on their platforms. In a 2020 CCI's *prima facie* order directing investigation against Alphabet Inc., the parent company of Google, it was noted that,

> *In relation to mandatory use of Play's payment system for paid apps & in-app purchases, the Commission is of prima facie view that mandatory use of application store's payment system for paid apps & in-app purchases restricts the choice available to the app developers to select a payment processing system of their choice especially considering when Google charges a commission of 30% (15% in certain cases) for all app purchases and IAPs. Further, considering that Play is the dominant source of downloading apps in the Android OS (90% of the downloads) and its condition requiring use of application store's payment system for paid apps & in-app purchases, it appears that Google controls the significant volume of payments processed in this market.*

II. Platform Neutrality/ Self-Preferencing

1.14 The digital economy largely operates through digital platforms- a business entity working as a marketplace, connecting its business users to the end consumers. However, most of these entities are not merely platforms for other business users to list their applications/products/services, rather, their respective parent companies also list their different applications/products/services on these stores/platforms. This raises concerns of self-preferencing and warrants the assurance of platform neutrality. If the platform engages in self-preferencing, it leads to a negative effect on downstream markets, as their profits may go down and, at the same time, gives an unfair advantage to the leading player-the platform itself.

1.15 In the same 2020 Alphabet Inc. case, it was alleged that Google unfairly privileges 'Google Pay' by prominent placement on the Play Store, Android OS and Android based smartphones by skewing the search results on the Play Store in favour of Google Pay, by manipulating the search advertisements algorithm on the Play Store in favour of Google Pay; and by pre-installing and prominently placing Google Pay on Android smartphones at the time of initial set-up resulting in a "status-quo bias" to the detriment of other apps facilitating payments through UPI as well as other methods of payment, such as mobile wallets, net banking, etc. In this regard, the CCI's in its *prima facie* order noted that,

> *Manipulation of these features on/by the dominant platform, along with other self-preferencing means, may work as a potent instrument to divert traffic to its newly launched app and thus interfering with the process of 'competition on the merits'. If Google started featuring Google Pay in the list of top apps, user choice apps and top free apps, not on objective parameters but simply as a means of self-preferencing, then the same, in conjunction with other preferential policies, may amount to imposition of unfair condition on both user groups (apps and app users), imposition of discriminatory condition on apps, an act of leveraging its dominance in the application stores market to enter/protect the relevant market for UPI based payments market and may thus contravene the provisions of Section 4 of the Act as alleged by the informant.*

III. Adjacency/ Bundling and Tying

1.16 Many digital firms force consumers to buy related services. For example, food delivery apps make it mandatory for restaurants to only use the platform's delivery services. Similarly, a mobile OS encourages the user to their own search engine. Upstream TV networks offer bundles of channels to downstream distribution companies and earn advertising revenue when their channel is viewed. First, this leads to the consumer not being given an option to choose, and may in fact lead to her paying higher prices ultimately. Second, and more importantly from a competitive perspective, it may also lead to elimination of rival firms. A classic example of this has been the success of Microsoft Office. About two decades ago, Lotus was an important rival of Microsoft, particularly its spreadsheet software- Lotus 1-2-3. Later, it became Lotus SmartSuite, where the spreadsheet software was clubbed with a word processor, a presentation software, database software, and an organizer-quite similar to Microsoft Office Suite. However, what allowed Microsoft to beat Lotus was largely this: Microsoft bundled its entire Office Suite to its Windows Operating System. Lotus could not keep up with the transition from 16 to 32-bit applications on

Windows 95. Microsoft, to this date, largely stands undefeated in the desktop applications market. That was the 1990s. Bundling and Tying in new digital markets continues to impact competition. Leading players can leverage their market power in one core platform service to another.

1.17 While dealing with a case against Google LLC in 2018 that pertained to this issue, the CCI in its order directing investigation noted that,

...mandatory pre-installation of entire GMS suite under MADA (Mobile Application Distribution Agreement) amounts to imposition of unfair condition on the device manufacturers and thereby in contravention of Section 4(2)(a)(i) of the Act. It also amounts to prima facie leveraging of Google's dominance in Play Store to protect the relevant markets such as online general search in contravention of Section 4(2)(e) of the Act.

IV. Data Usage

1.18 Data is the driving force of the digital economy. Digital firms work through computer algorithms and those run using massive databases of consumer and business information. Monopolistic control over data, inevitably leads to a monopolistic digital market. Imagine if there was only one factory that was possible in a physical market. All firms would then rush to build large factories, and the player that has the largest factory would quickly push out all other players. In digital markets, due to network effects, as more and more users get on a platform, the more data the platform collects, and then processes. A key issue with digital platforms is that of the monopolistic usage of this data. Digital platforms have become vast repositories of consumer as well as business data. The concern here is that leading platforms may leverage that position and put consumer preference data to their own use. This may give the platform an upper-hand in the digital market. This also enables these platforms to collect and store large amounts of data for comprehensively tracking and profiling end customers and business users. Privileged data from one market may be, thus, used by a leading platform in another market to gain competitive advantage. This further leads to the position of the leading platform getting entrenched. Second, the use of data needs to be seen as a zero-price or non-price factor that can hamper privacy. A competitive digital business environment must not only ensure an equal relationship between the leading

platforms or Big Tech companies and its business users, but must also ensure data privacy.

1.19 It was highlighted by the Informant in Case 16 of 2021 of the CCI, involving food delivery applications,

...that Swiggy and Zomato collect data from customers based on their past purchases and uses that data to customise the offerings being made to each consumer...Thus, the data they possess also strengthens their market positioning, dissuading new players from entering the relevant market.

V. <u>Acquisitions and Mergers</u>

1.20 One recurrent issue in digital markets concerns the risk of so-called 'killer acquisitions' or of large firms buying highly valued start-ups without the transaction being subject to merger control rules that focus upon turnover. In the choice between 'Build versus Buy', the larger platforms tend to pick the latter, thereby disallowing the smaller firms to grow beyond a certain limit, in the digital markets. While mergers may be vertical or horizontal, it may in fact be conglomerate mergers that are most likely to lead to competition concerns.

1.21 As per current competition law, the Commission reviews mergers and acquisitions on two grounds: assets and turnover. Due to this reason, many high-value deals between Big Tech firms in India have escaped scrutiny because the parties involved have had few assets and low turnover. Importantly, due to this reason, Facebook`s acquisition of WhatsApp in 2014 for $19 billion, for example, required no CCI clearance.

VI. <u>Pricing/ Deep Discounting</u>

1.22 A common concern peculiar to e-commerce sites, but also to food delivery and hotel booking sites, is that of huge discounts offered on leading platforms. However, there is a lack of transparency about the basis of these discounts. Platforms practice tactics like 'dynamic pricing' (tracking consumer demand and preference data and raising prices when demand is high), and bogus sales and markdowns (inflating price and then offering a 'sale' or 'discount'). Such practices and discounts lead to service providers losing control over the final price, as the authority to decide on discount rates rests with the platform. In the case of below-

cost pricing, the ability of offline players to sell and make profits also stands impaired.

1.23 In a 2019 case order, involving e-commerce websites, Amazon and Flipkart, the issue of deep discounting was also raised by the Informant:-

> *Flipkart provides deep discounts to a select few preferred sellers (such as Omnitech Retail) on its platform which adversely impacts non-preferred sellers...(it is) alleged that there is evidence in the form of communications from Flipkart to its sellers stating that it would incur a part of the cost during the Big Billion Days (BBD) sales or Diwali sales etc. However, no such opportunity is available to other sellers who are, thus, unable to compete with such preferred sellers....Similar allegations of deep discounts by Amazon to the detriment of non-preferred sellers have been levelled. Further, the fact that Amazon and these preferred sellers have the same contact details are also evidence of linkage between them. Moreover, Amazon has its own private label brands which are sold only through these preferred sellers.*

VII. Exclusive Tie-ups

1.24 One of the most common anti-competitive behaviours on part of e-commerce platforms is that of exclusive arrangements. An e-commerce platform may decide to enter into an agreement with a brand, to allow sale of the brand's products on its platform, absolutely exclusively. This not only hampers with the business of other e-commerce platform but may also lead to losses for brick-and-mortar sellers. A related phenomenon is that of platform price parity clause in agreements, linked closely to Anti Competitive Practice (ACP) 6, mentioned above. This implies that a platform may disallow a business user to sell at lower rates on any other platform, except its own. This ultimately leads to increased prices for the end-user and inflation.

1.25 Many cases of exclusive tie-ups have been reported to the CCI. In *Case 16 of 2021*, the Commission dealt with food delivery apps, Swiggy and Zomato. The Commission was of the view that these platforms, by way of such clauses, hinder the entry of new players in the market. In *Case 40 of 2019*, the Commission is looking at allegations made by the Informant against Flipkart and Amazon. It was averred that these platforms engage in preferential listing and exclusive tie-ups with certain sellers by using tags like, "Assured Seller" and "Fulfilled". In this regard, it was noted by the Commission that,

...it can be prima facie inferred that there appears to be exclusive partnership between smartphone manufacturers and e-commerce platforms for exclusive launch of smartphone brands. Thus, exclusive launch coupled with preferential treatment to a few sellers and the discounting practices create an ecosystem that may lead to an appreciable adverse effect on competition.

VIII. Search and Ranking Preferencing

1.26 Users search using keywords on any platform and receive results based on algorithms. Organic search results should return products/services without any bias- top selling or highest rated results on the top. However, if any other products take precedence, it indicates search bias- in favour of sponsored products, or orders fulfilled by the marketplace itself.

1.27 In the same 2019 case involving Amazon and Flipkart, CCI had noted that,

The issue of preferential listing should also be viewed in conjunction with the foregoing (exclusive tie-ups). Competition on the platforms may get influenced in favour of the exclusive brands and sellers, through higher discounts and preferential listing. Thus, the allegations are interconnected, and warrant a holistic investigation to examine how the vertical agreements operate, what are the key provisions of such agreements and what effects do they have on competition. Given that both the major platforms are stated to follow the same mechanics in terms of their exclusive tie ups and preferential terms with brands/sellers, competition between the platforms prima facie does not play a role in mitigating the potential adverse effect on competition on the platforms.

IX. Restricting third-party Applications

1.28 Gatekeepers have been found to restrict the installation or operation of third-party applications. An example of this is the anti-steering provision discussed earlier. Apart from payments, an operating system, for instance, may altogether prevent users from utilising the services of an application other than its own.

1.29 In a 2021 case against Apple Inc., CCI noted,

that App Store is the only channel for app developers to distribute their apps to iOS consumers which is pre-installed on every iPhone and iPad. Further, third party app stores are not allowed to be listed on Apple's App Store as the developer guidelines as well as agreement prohibits app developers from offering such services. Article 3.2.2(i) of the App Store Review Guidelines restricts the app developers from "Creating an interface for displaying third-party apps, extensions, or plug-ins similar to the App Store or as a general-interest collection". Further, Article 3.3.2 of the Apple Developer Program

License Agreement inter alia provides that "...the Application must not create a store or storefront for other code or applications...". These restrictions imposed by Apple forecloses the market for app stores for iOS for potential app distributors. It prima facie results in denial of market access for the potential app distributors/app store developers in violation of Section 4(2)(c) of the Act.

X. Advertising Policies

1.30 With digital markets, marketing has also become largely digital. Consumer data can be leveraged with the help of Artificial Intelligence and Machine Learning(AI/ML) for cost-effective targeted advertising. Competition agencies are increasingly concerned about competition in digital advertising markets, with a number of recent market studies highlighting a range of potential competition concerns. In particular, there appears to be increasing market concentration, consolidation and integration across many levels of the supply chain. In regard to digital advertising, there rises the issue of self-preferencing, as well as conflict of interest, when platforms operate at all levels of ad-tech supply chain.

1.31 In 2021 case, while dealing with a case against Alphabet Inc. regarding online news publishing, the CCI *prima facie* noted that,

> *Based on the information available, it appears that the instant information highlights the alleged bargaining power imbalance that flows from the alleged position enjoyed by Google as a necessary trading partner for digital news publishers in accessing online audience as well as in generating digital ad revenue. The case also brings forth the issue of alleged lack of transparency and information asymmetry in the ad tech services provided by Google, which does not allow publishers to optimize the yield on their ad inventory.*

The Committee took into account the responses of a number of relevant parties and stakeholders, to better understand competitive conduct in digital markets. The following Chapter presents those responses.

Chapter II

Major Issues Discussed

2.1. During the course of multiple meetings with the representatives from the Ministry of Corporate Affairs, Competition Commission of India, various industry associations, industry stakeholders and major digital companies across industries, the Committee deliberated upon the ten ACPs. Their submissions with regard to those were as follows:

I. Anti-Steering Provisions

2.2. Stakeholders criticized anti-steering policies, terming them anti-competitive and guilty of stifling consumer choice as because of these policies, businesses cannot shift to third-party providers, even if they were offering more functionality and options than the ones provided by Big Tech companies.

2.3. The following was submitted before the Committee by industry associations:

The Apple App Store prohibits developers from contacting users outside the store about alternate options. Although Google Play did not strictly enforce its policies earlier, it announced in September 2020 that it would also mandate its own billing system and bar all other payment methods. Because of a strong push back from developers, they have postponed this measure multiple times in India - first until March 31, 2022 and now to October 31, 2022. However, Google is enforcing these rules in other countries, and will soon remove apps for non-compliance. These anti-steering provisions affect developers by removing their choice of payment systems, and potentially giving the app stores access to sensitive commercial data. It also makes the commissions unavoidable, thereby adversely affecting developer bottom lines.

The industry representatives have put forward that 'if anti-steering provisions are not enforced, businesses would continue to have the freedom to choose bespoke or feature-rich alternatives for their services. A proliferation of such services would also mean that there would be greater incentives for innovation in the market. Accordingly, forced anti-steering results in anti-competitive exclusionary practice and therefore needs to be specifically declared anti-competitive.'

II. Platform Neutrality/ Self-Preferencing

2.4. Domestic industry representatives submitted the following before the

Committee on the issue of self-preferencing:

App stores enable the discovery of apps through their search function. Search results are a very important way for developers to gain new customers, as apps listed at the top of the results are likely to get clicks and downloads. This opens an avenue for Apple and Google to misuse their position as operators of app stores to distort competition by giving an advantage in rankings to their own apps over those of competitors.

2.5. Google India in its response furnished the following with regard to platform neutrality:

Google has formal policies prohibiting the company-wide sharing of identifiable data about third-party apps gathered by Play. This third-party data is not shared with Google's first party app developers to unfairly advantage them, or for purposes other than benefit across the Play and Android ecosystems. Further, Android is available without any proprietary apps, including from Google. Google's own apps are licensed separately from Android and share 'shelf space' on devices with non-Google apps. In addition, Play's developer policies – including the requirement that apps use Play's billing system for in-app purchases of digital goods, policies of discovery and ranking – apply to all apps on Play, including Google's own apps.

2.6. The following has been furnished by Amazon India with regards to the same issue:

Amazon India is not a competitor to sellers on the Amazon India Marketplace. Amazon India is governed by the FDI Policy and strictly complies with that policy. This means Amazon India cannot and does not assume a 'dual role' on its marketplace by offering retail products for sale to consumers. Amazon India's role is limited to acting as an intermediary or a conduit connecting a seller to a buyer through its technology interface, meaning Amazon India is not a competitor to sellers on the marketplace.

It was further stated, Amazon India must provide, and does provide services to sellers 'at arm's length and in a fair and non-discriminatory manner' under the FDI Policy. Amazon India's interests are aligned with those of its sellers. As Amazon India is purely a marketplace, Amazon India only succeeds if its sellers succeed. Amazon India's economic incentives are therefore to treat all sellers fairly and to

give all sellers the same opportunities to succeed. Amazon India therefore has no incentive to act unfairly by favoring one or more sellers because this would destroy seller trust in the Amazon India Marketplace.

2.7. The Competition Commission of India representatives during the sitting of the Committee held on 28.04.2022 stated the following with regard to platform neutrality:

"...this is a very fundamental issue because this kind of ensures that the markets remain contestable and competitive but by the presence of these Big Tech companies, this is under question."

2.8. Further, Chairperson, Competition Commission of India on the same issue during the sitting held on 28.07.2022 stated:

"If somebody makes a complaint that they are not following platform neutrality, we should have a faster mechanism to deal with that issue. We cannot go into an investigation and then go through a long-drawn process of one and a half years. It has to be a very quick process. We have to lay down not only the unit structure and contours but also the methodology how it can be done faster because he has clearly violated."

III. Bundling and Tying

2.9. The industry representatives submitted the following before the Committee:

Both the dominant app stores offer a multitude of services beyond any standard payment gateway available in the market (which typically charge 1-2% commission as processing fee). Beyond payment processing, app stores also offer services such as app review, secure download, support in app development etc. In fact, the majority of the developers operating in India do not use the proprietary billing system of Google, and yet are heavily and intrinsically dependent on Google Play Store for their discovery and review process. But by bundling these services into one take it or leave it package, app stores make it difficult for developers to establish the fair fee for each service, while also reducing their ability to pursue other alternatives. The size and ubiquity of the dominant app stores, which benefit immensely from being pre-installed on their own operating systems, makes it almost impossible to negotiate the quantum or threshold for commissions.

It was further stated that, 'Digital firms could leverage their market power in one market to expand into other markets and foreclose competitors therein. In the presence of substantial entry barriers, firms could do so by linking/bundling their main product or services to other complementary products or services to which they intend to expand their market position.'

2.10. Google India with regard to bundling furnished the following:

Google offers phone makers the option of preloading a suite of popular Google apps (such as Search, Chrome, Play, Maps and Gmail), which help ensure the phone 'just works', right out of the box. Phone makers don't have to include our services and they're also free to pre-install competing apps alongside ours.

Further, negotiations between device manufacturers and app developers for pre-installation are highly competitive. On Android, device manufacturers can select which apps and app stores they would like consumers to have installed on the device "out of the box." Manufacturers can monetize this channel through pre-installation deals with app developers.

2.11. The Competition Commission of India in its background note has furnished the following:

If the company makes the 'must have' product available only when its other products are also taken in a composite bundle, such leveraging can harm competition. Also, the Commission is currently looking at a case, where it has been alleged that in order to be able to pre-install the 'must have' application store, the OEMs have to mandatorily pre-install a bouquet of other applications of the same company. This bouquet contains applications, which have competing options in the same category, for instance, search or video streaming apps. However, once pre-installed, users may lose the incentive to download these competing apps. They may exhibit a behavioural bias towards the already available apps. This can lead to foreclosure of competition and can also deter innovative entry.

And, during the sitting of the Committee held on 28.04.2022, Chairperson, Competition Commission of India stated:

"I would like to say that wherever bundling or tying up is resulting in anti-competitive activities in contravention of the Act, definitely, we are preventing it. In some cases,

bundling is efficiency enhancing. In some cases, it is against competition. So, we are taking a very nuanced view."

IV. **Data Usage**

2.12. The data advantage of market leaders, which/who have amassed wealth of personal data over a period of time, overshadows the offerings of newer platforms in terms of quality and data-fed personalisation. As a result, the big tends to get bigger, while a small entrant struggles to attain a critical mass of users and user data.

2.13. The industry representatives submitted the following before the Committee:

Big Tech companies in the digital market are fuelled by data. The main source of their power is the collection and hoarding of the digital data that fuels the software algorithms that deliver the companies' services. The more users or businesses get onboarded to a tech giant's business, the more data Big Tech is likely to accumulate. With their data pool constantly increasing, the tech giants continue to entrench their position in the digital market.

Further, the Big Tech impose unfair and discriminatory conditions/initiatives including prominent placement results in driving more downloads/ traffic/ transactions on their Payments App. It allows the Big Tech to generate more user data which in turn empower them to innovate and offer better features than their competitors. This creates a vicious cycle and gives The Big Tech companies insurmountable scale advantages, thereby (and at the same time) creating barriers to the entry and expansion of smaller and newer innovative companies.

2.14. Apple India with regard to the above issue furnished:

Apple designs its products and services according to the principle of privacy by design and collects only the minimum amount of data necessary to provide users with a product or service. Using on-device intelligence, Apple products are designed to minimize the amount of data that leaves a user's device. Data minimization both enhances privacy and puts the user in control of their data. Apple receives certain data in order to fulfill a user's request, including transaction information, or to improve or personalize the service to the user. This data is associated with a random identifier and does not identify the user. Any data that is encrypted, not personally identifiable, or not linked to the user's ID is either not readily accessible by Apple or otherwise not readily associable with the user.

2.15. Facebook India on the same issue furnished:

While data is important, there is a risk of overstating its contestability and value. Data is ubiquitous and easily replicable - one firms' collection of data does not preclude another's collection of identical or substitutable data. By and large, data is not 'collected' but actually generated by businesses as they build the ability to capture signals through their services and technologies. Any business is in a position to create its own data space in such a way. But it can also purchase previously generated data. Indeed, data is widely available for generation or purchase. Indeed, Meta's competitors also have access to comparable data to design and innovate new products and services that compete with Meta.

2.16. The following has been furnished by the Competition Commission of India in its background note:

The role of data in the current competition cannot be understated. Most of the Big Tech companies possess vast amount of data along with the capability to process it with artificial intelligence and machine learning algorithms. Acquisition of other companies that possess any kind of data by these big technology companies may result in competitive advantage, especially compared to the new entrants in the market.

2.17. Further, during the sitting of the Committee held on 28.04.2022, the following was stated by representatives of Competition Commission of India:

"Another contributing factor has been the scale of advantages that these big tech companies enjoy and particularly in the context of access to data. Now, the more and more data that they have access to enable them to provide better services but, at the same time, it gives them a very huge competitive advantage against other businesses and over a period of time, this advantage increases exponentially and eventually becomes a big entry barrier. So, this is another characteristic which has led to this phenomenon of big tech companies."

V. Mergers and Acquisitions

2.18. Competition Commission of India in their background note have furnished the following:

The Merger and Acquisitions involving Big Tech companies that are notified to the Commission are assessed within the overall framework provided under the Competition Act, keeping in view the aforesaid characteristics of the digital markets. In case of identification of any likelihood of appreciable adverse effect on competition, post the assessment of combination, the interventions are usually in the form of modifications. These modifications can be in the form of structural remedies such as divestment, or may entail behavioural commitments on the part of combining parties.

In 2018, Government of India constituted Competition Law Review Committee ('CLRC') to ensure that the Competition Act '*is in sync with the needs of strong economic fundamentals*' which has observed that certain combinations (mergers & acquisitions), such as transactions forming part of digital markets, do not meet traditional asset thresholds but may still have an effect on competition. Accordingly, it proposed that an enabling provision empowering the Government to introduce necessary thresholds including a deal-value threshold for merger notification may be provided. The Committee also observed that certain jurisdictions like the European Union accept remedies from parties to antitrust disputes. These remedies may be in the form of settlements and commitments. The Committee endorsed such a mechanism to ensure speedy resolution of cases. It recommended that the Competition Act be amended to empower Competition Commission of India to allow settlements and commitments for certain types of anti-competitive agreements and for abuse of dominance.

2.19. With regard to mergers and acquisitions, representatives of Facebook India deposed as below during the sitting of the Committee held on 23.08.2022:

"...mergers or acquisitions are legitimate valid business practices across the industry, across the economy, and in the technology and digital space. We will have start-ups, we will have entrepreneurs who would come up with new ideas, new innovation, and for them to have the ability and incentive to innovate, acquisitions are very important business element that are available to these entrepreneurs as they move it. It allows them to recoup their investments, it helps improve the products, and also it brings in talent. So, even for a company like Meta, if there is an acquisition, it is not because we are killing competition but it is because we want to

nurture it, we want to bring in that talent into that company, and thereby, improve our services. At the end of the day, it is innovation which is the most important factor which we all of us continuously strive for."

2.20. The Chairperson, Competition Commission of India on the issue stated the following during the sitting of the Committee held on 28.07.2022:

"One notable thing is that we are not yet able to capture certain mergers and acquisitions because they do not meet the threshold of assets and turnover. That is why one of the enabling provisions in CLRC recommendations is to bring a deal value because these digital markets are asset light and they do not have a turnover. So, a deal value will come. In case it crosses that particular threshold, then they will have to come to CCI for approval."

VI. Pricing / Deep Discounting

2.21. Ministry of Corporate Affairs in their post evidence replies furnished the following with regard to deep price discounting:

Section 4 of the Act prohibits abuse of dominant position by enterprises. Imposing unfair or discriminatory price in purchase or sale (including predatory price) by dominant players, is considered, amongst others, as an abusive conduct. Predatory price has been further explained as sale of goods or provision of services, at a price which is below the cost of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors. Also, Section 3 of the Act prohibits anti-competitive agreements, which cause or are likely to cause an appreciable adverse effect on competition.

Deep discounting by platforms with market power may be a concern when discounts are discriminatory and when they push prices to below-cost levels in certain product categories and affect offline and online retailer's ability to compete.

The Commission/ CCI has received cases against certain major e-commerce companies alleging *inter alia* deep discounting/ predatory pricing. In cases where *prima facie* contraventions of the provisions of the Competition Act have been observed, the Commission/ CCI has ordered investigations, which are presently pending before the Office of the Director General.

Further, in the market study on e-Commerce conducted by the Commission/ CCI, it suggested that the marketplace platforms should adopt self-regulatory measures on deep discounting policies by bringing out clear and transparent policies on discounts, including inter alia the basis of discount rates funded by platforms for different products/suppliers and the implications of participation/non-participation in discount schemes.

2.22. Amazon India furnished the following with regards to the issue:

The Amazon India Marketplace is governed by the FDI Policy which stipulates that the marketplace cannot and it does not directly or indirectly influence the sale price of goods or services, and we constantly endeavor to maintain a level playing field providing equal services to all similarly placed sellers. Decisions about the prices and products sold on the Amazon India Marketplace, including on product assortment offered by sellers, are taken independently by the sellers.

2.23. Uber India representatives during the sitting of the Committee on 23.08.2022 on the issue of pricing submitted the following:

"The pricing which is provided in Uber platform is transparently published as a rate card which is available to drivers. In a certain time of a day, the pricing does vary dynamically and that information in real time shared with the drivers. In addition, we also share with the drivers across the country upfront the destination in which the dispatch has been provided to them. With all this information, they can choose to do the trip or not to do the trip. So, they have that flexibility to do that."

2.24. In the context of pricing, the issue of billing policies and commissions was also discussed.

2.25. Industry representatives submitted the following before the Committee:

Big Tech app hosting platforms charge as high as up to a 30% fee for in-app purchases and subscription fees, which results in an unsustainable business model for apps for small Indian entrepreneurs. Some Big Tech companies are already charging and others have announced plans to charge this fee.

Further, the Big Tech Companies have become gatekeeper firms with tactics undermining the natural forces of competition. With one simple policy change tomorrow, the Big Tech companies can widen the net to include other internet/

digital businesses and force them to pay certain percentage of commission. It would appear that Indian startups literally have to pay taxes to the Big Tech companies to run their digital business in India.

2.26. Stakeholders further elaborated as follows:

Both Google and Apple allow apps selling physical goods to use third party payment services and do not charge any additional service fees on the in-app transactions. But for certain app categories selling digital goods, there is an additional app store fee which is modelled as a set rate of commission on purchases of paid apps and in-app purchases (IAPs). These app stores do not provide any additional service to the app developers who sell digital goods on the app store via paid downloads or in-app purchases, yet, these app stores compulsorily mandate the use of their proprietary billing system and also charge a high commission on each transaction. The commissions charged vary depending on the type of app and sometimes, according to the jurisdiction where it operates. The Apple App Store charges either 15 or 30% commission on purchases of paid apps and IAPs, depending on the type of app. Similarly, Google Play charges either 15 or 30%.

2.27. Google India furnished the following response in this regard:

Due to unique circumstances with the payments landscape in India, in October 2020, we had announced 31st March, 2022 as the timeline for developers in India to integrate with Google Play's billing system. In December, 2021, we extended this timeline to 31st October, 2022 to provide developers in India the required product support for recurring payments through convenient user payment systems, including UPI and wallets, and to also provide them more time in light of the changes to India's recurring digital payments guidelines. Therefore, presently developers in India who have not yet implemented Google Play's billing system have time till 31 Oct, 2022 to do so.

Further, charging a service fee is a common industry practice across distribution platforms. App stores such as Apple App Store, Samsung Galaxy Store, Amazon App Store, and Microsoft Store, all have policies that require developers to pay fees and use the platform's in-app payment system to purchase in-app digital products. Our service fee is competitive with those of rival distribution channels - the Competition and Markets Authority (UK's Competition Authority)'s Interim Report into

Mobile Ecosystems, for example, found that Google's rates were similar to those set by other app stores.

Also, it is important to note that the vast majority of developers do not pay a service fee. The service fee is only charged when a developer chooses to charge users for their app or offer digital content for purchases within their app and the user makes the purchase. This means that only 3% of developers are subject to the service fee, while the remaining 97% can distribute their app on Play and utilize all the developer tools and services at no cost.

2.28. Apple India representatives during the sitting held on 23.08.2022 deposed the following before the Committee:

"87 per cent of Indian developers on the app store do not pay Apple any commission at all. For the small number of apps they do, we have only made the app store a better deal for those developers overtime including with the small business programme which was launched in 2021 which cuts our commission to half of those who are eligible. Around 99 per cent of Indian developers are eligible for this programme. Finally, 17 developers, India's largest and the most successful, pay 30 per cent commission. There are 21000 Indian apps or app developers who have live apps on the app store as a percentage of those who pay 30 per cent is a fraction of a fraction of a single per cent, it is 0.08 per cent people pay the 30 per cent commission. It is 17 out of 21,000 developers who have live apps."

2.29. Ministry of Corporate Affairs in their post evidence replies furnished the following with regard to billing policies of Big Techs:

CCI has directed separate investigation(s) against Apple and Google in respect of imposition of mandatory use of their respective billing system, on app developers, for distribution of paid apps & in-app purchases which restrict the choice available to the app developers to select a payment processing system of their choice especially considering when Apple/ Google charge a commission which range upto 30% (15% in certain cases) for all paid apps or contents offered through apps.

Further, such 'allegedly' high fees may also increase the cost of competitors of Apple/ Google affecting their competitiveness vis-à-vis verticals of Apple/ Google (the fee in respect of which, in any case would be internalized). Such a policy of the application store (of Apple/ Google) may disadvantage competitors in the

downstream markets, such as music streaming, e-books/ audiobooks etc. If the application developers, in response, raise their subscription fees to offset these costs or remove/reduce premium/paid subscription offers for users, it may affect user experience, cost and choice. Such conditions imposed by the app stores limit the ability of the app developers to offer payment processing solutions of their choice to the users for app purchases as well as in-app purchases.

VII. Exclusive Tie-ups

2.30. Competition Commission of India in their background note furnished:

Exclusive tie-ups by major digital platforms can also foreclose markets and constrict competition in certain circumstances.

An exclusivity arrangement between a dominant platform and a business user of the platform with significant market power in the downstream market can possibly allow them to bolster their respective strengths, but does not augur well for the market or its other participants.

VIII. Search and Ranking Preferencing

2.31. Keywords are words or phrases that are used to match ads with the terms people are searching for in the search bar on the Big Tech Company. Selecting high-quality, relevant keywords for advertising campaigns can help advertisers reach the right customers at the right time. A keyword can be a single word or a phrase.

2.32. Industry representatives submitted the following in this regard:

Bidding on company brand keywords on search engine platforms is currently allowed, which we believe is a copyright violation. As a result, brands and products which are IPR registered and licensed are forced to shell out extra money to safeguard their own company name, when the brand name is being used as a keyword in the search. Further, allowing bidding on keywords that may be registered trademarks of brands allows fraudsters to use this to target innocent customers by bidding on BFSI companies' trademarks. The misleading search results with the search query for Banking, financial services and insurance (BFSI) companies appear on leading Digital Advertisement Platforms, search engine platform, and Social Media platforms. Further, these search results appear as advertisements.

2.33. Google India with regards to the search and ranking preferencing furnished the following:

Google's Keyword Bidding Policy, which allows bidding on trademarked terms, enhances user choice, enables Indian websites to promote competing goods to those offered by the trademark owner, and is in compliance with Indian Trademark law. Advertisers bid on keywords in an auction system for the opportunity to display their ads to users searching on the Google search engine. The placement of ads is based on a real time online auction mechanism. Whether a keyword bid results in Ad being placed, and, if so, where it is placed among other Ads (i.e. its "rank") depends on many different factors, of which price is only one consideration. Other factors include the quality of the landing page and the ad. An ad that rarely receives clicks–which could be due to users' perceptions of irrelevant or unappealing content–would have a lower quality score. In simple terms, an advertiser with content that is responsive to a search query will not have to bid as much as an advertiser with content that is not responsive or useful to the consumer. Google's Ads pricing is both dynamic and dependent upon consumer behavior. The winning bidder of the auction that determines advertising placement on Google search results pages won't necessarily pay its full bid amount, but only the minimum amount needed to maintain that position in the auction.

2.34. Microsoft India on the same issue furnished the following:

For Microsoft's search functionality (Bing), there is no set price charged for sequencing as each individual advertiser decides the amount it would like to bid for specific keywords. This allows the auction process to remain competitive. Additionally, sequencing is important and helpful to search users in situations where a trademark term has become a common name for a certain product, such as the term "Kleenex[,]" which has become a common term for facial tissue.

It is the advertiser's responsibility to comply with Microsoft's advertising policies, including its intellectual property policy, which requires advertisers to ensure its keywords and ad content do not infringe or violate the intellectual property rights of others.

2.35. The Chairperson, Competition Commission of India during the sitting held on 28.07.2022 submitted before the Committee:

"...there should be transparency in the search ranking... Today, there is no law of the land that the search ranking has to be transparent."

IX. Restricting Third-Party Applications

2.36. During the discussions with the industry representatives with regard to restricting third party applications, it was brought to the attention of the Committee that Google puts out alert while installing third party Apps saying that it is a risky application, while Apple does not even allow any third-party apps to be installed on the i-phone.

X. Advertising Policies

2.37. Big Tech company's ad business can be a monopolist threat, because it owns every step in a system that connects ad sellers and buyers, which gives The Big Tech company an unfair edge over the market.

2.38. The industry representatives submitted the following before the Committee:

A Big Tech company is the dominant player in Search advertising. All websites would have The Big Tech company crawlers (a program used by search engines to collect data from the internet) placed on its website so that they get traffic through The Big Tech company search results. By requiring advertisers to place crawlers in their websites, The Big Tech company has been able to not just perform the best in terms of Search Advertising but also amass copious amounts of consumer/user activity and data.

Further, the Big Tech company's Developer Policy permits apps to host advertisements pertaining to skill-based contests, and tournaments if, amongst other criteria, the app hosting the advertisement does not have any ownership interest in the advertised services.

Furthermore, on bargaining power imbalances, particularly in digital news publishing, the industry representatives submitted:

Many countries (such as France, Australia, and Canada) have introduced or proposed specific legislation in order to provide a level playing field for news publishers relative to digital platforms. The Australian News Media and Digital Platforms Mandatory Bargaining Code 2021 has set up clear bargaining guidelines. The code addresses bargaining power imbalances between digital platforms and

Australian news businesses. The code enables eligible news businesses to bargain individually or collectively with digital platforms over payment for the inclusion of news on their platforms. The Code has arbitration provisions in the event of negotiating breakdowns and also provisions for Big-Tech companies for being designated as a monopoly, engaged in offering unfair bargains and indulging in anticompetitive practices.

2.39. Ministry of Corporate Affairs in their post evidence replies furnished the following information:

As of 2021, the revenue generated by digital advertising across India was valued at around 246 billion Indian rupees. That same year, India's total advertising revenue was over 700 billion Indian rupees and the country was ranked among the largest advertising markets across the world in terms of ad spending.

The digital ad market will rapidly overtake print as well as television revenues by fiscal year 2024. According to these projections, the digital ad revenue in the country will be worth almost 540 billion rupees by fiscal year 2024, while the television and print ad revenues were projected to reach about 455 billion rupees and 276 billion rupees respectively. These numbers clearly show that India is heading towards a digital advertising future.

As India's content consumption moved increasingly to online platforms, advertisers also followed their audiences to the digital world. As of January 2020, Facebook had an advertising reach of around 260 million users across India. This was the largest audience base reached via advertising in the country that year, followed by Instagram and LinkedIn with a reach of 80 million and 62 million users respectively.

XI. Ex-Ante Restraint

2.40. The industry stakeholders pointed out the following in their submission to the Committee:

Large online intermediation services like marketplaces, app stores and other online intermediation services in various sectors including mobility, travel, food, content sharing etc, act as a critical platform service that connects end users and business users. Given the size and critical nature of these platforms, it becomes imperative to define what makes a platform a 'critical service' before proceeding to other provisions regulating the digital market. It is in this background that other legislations

dedicated to digital markets necessarily define the target platforms, i.e., gatekeepers (or by whatever name it may be called). Having a definition of gatekeeper/digital platform in place would mean that once information has been filed or a suo-moto case has been picked pertaining to a gatekeeper, the allegation will have to be tested against the ex-ante provisions that will specifically cover the anti-competitive practices of gatekeepers. This would help in faster and efficient disposals.

They further stated that, 'In India, as in many other countries, the prevailing Competition Acts are *ex post* which means that they are designed to penalise anti-competitive behaviour *only* after it has already occurred. Unfortunately, given the pace at which digital markets move, such *ex post* measures may be too delayed to prevent irreparable harm to affected parties and as a result, *ex post* monetary penalties are unlikely to be fully effective in dealing with the issue.'

2.41. The Ministry of Corporate Affairs on the same issue in their post evidence replies furnished:

In the context of the digital sector, the rationale for ex-ante regulation is grounded in the imperative of adequately addressing the concerns that arise from systemic/structural infirmities of these markets and to be able to do so rapidly enough before the platforms can entrench and leverage their position by eliminating potential competition and/or by disadvantaging users.

Case-by-case antitrust adjudication allows for a nuanced, evidence-based analysis of the effect of a specific business conduct. However, the requirement of gathering 'sufficient' evidence to discern the complex effects of conduct and establish liability, ensuring procedural fairness in the investigation/adjudication process, and judicial review of decisions make this a long route to effectuate regulatory interventions in markets. In fast-moving digital markets, protracted litigations and delayed interventions could prove to be expensive or even futile.

Moreover, while being a fact-specific exercise, antitrust enforcement helps devise well-tailored remedies, such remedies lose their relevance and effectiveness if the implementation is not speedy and timely.

In view of the foregoing, a number of academic and policy papers/reports in several jurisdictions, have argued in favour of complementing competition law enforcement with some form of ex-ante regulatory framework to ensure timely and effective

action against risks of anti-competitive practices by critical/large digital platforms in fast-evolving digital markets.

CCI has been studying the ex-ante measures proposed or already enacted by different jurisdictions in order to ascertain the feasibility of adopting the same in the domestic framework, institutional mechanism for enforcement and other attendant modalities. There could be a separate legislation to provide ex-ante regulatory mechanism.

2.42. Chairperson, Competition Commission of India during the sitting of the Committee held on 28.07.2022 stated as follows:

'We strongly feel that ex-ante provisions are required. It is a different issue altogether who will be administering it, but we do need it.'

2.43. It may be established, based on the numerous CCI cases, as well as, the discussions of the Committee with various representatives and stakeholders, that India needs ex-ante provisions for digital markets, particularly for the Big-Tech. Many countries have already moved forward in this direction.

Chapter-III

Enhancing Competition Law for Digital Markets in India

3.1. Anti-competitive behaviour in digital markets has been dealt with through ex-post provisions in competition law around the world. So is the case with India. However, there is an emerging global consensus that it is necessary to identify the leading Big Tech players or winners- the *Systemically Important Digital Intermediaries (SIDIs)* and thereafter, subject these to specific ex-ante provisions in order to ensure fair competitive conduct in the digital market. In this regard, many countries, as well as the European Union have come up with legislation that identify these small number of leading players and list regulatory provisions to ensure fair and contestable digital markets. It is pertinent to note that while some of these new competition laws are already in force, some others are yet to be implemented. The importance of global harmonization of digital regulations is immense. Global harmonization reduces the regulatory burden for companies while integrating India's digital ecosystem to global standards. Global harmonization is also vitally important for India's companies so that they can compete successfully around the world. Accordingly, excerpts from various competition laws in force/proposed legislations for digital markets from across the world dealing with various aspects of Anti Competitive practices by Big Tech companies are placed in **Annexure-I.**

3.2. India's digital ecosystem is not just likely to become the largest in the world, it must also be the most open and innovative. To that end, it is vitally important that every digital market that is part of this trillion dollar ecosystem be fair and contestable. As global evidence and India's own digital markets, indicate systemically important digital intermediaries require *ex-ante* competitive restraint. If such restraints are not applied, interconnected digital markets will rapidly demonstrate monopolistic outcomes that prevent fair competition. This will restrict consumer choice, inhibit business users, and prevent the rise of dynamic new companies. Finally, it is also necessary to harmonize competition law with the Consumer Protection Act 2020 and the e-commerce rules framed thereunder. Since the very purpose of building a robust competition law is to safeguard the interests of consumers as regards to fair price and quality. It should also include a mechanism to

ensure fair compensation to the consumers in order to address the grievances in cases of not providing a supply of a service or product.

3.3. Much of the economic growth will likely be driven by world-leading digital ecosystem that includes large IT/BPO firms, start-ups, ecommerce leaders, FinTech companies, and digital public goods such as the India Stack. The world's leading digital companies are also integral members. Thus, India's digital ecosystem is a vital resource serving global humanity. India's competition law must be enhanced so that it can meet the requirements of restraining anti-competitive behaviours in the digital markets. To that end, it is also necessary to strengthen the Competition Commission of India to take on the new responsibilities. India needs to enhance its competition law to address the unique needs of digital markets. Unlike traditional markets, the economic drivers that are rampant in digital markets quickly result in a few massive players dominating vast swathes of the digital ecosystem.

PART II

OBSERVATIONS/RECOMMENDATIONS

Traditional Physical Markets vs Digital Markets and Need for *ex-ante* Regulation

1. The Committee note that unlike traditional physical markets where returns increase only upto maximum efficiency point with increase in size and decrease thereafter i.e. there is diminishing return to size, digital markets have increasing returns to size, driven primarily by learning and network effects. The Committee further understand that digital businesses tend to have rapidly diminishing marginal costs as they grow and scaling quickly is the best strategy which often results in winner-take-all market outcomes, and hence, digital markets 'tip' quickly and one or two winners or leading players emerge in a short span of time. The Committee take serious note of the peculiar challenge posed by the winner-take-all markets where winners emerge within 3-5 years after the market starts to develop and by the time policies can be formulated or anti-competitive behaviours be adjudicated, markets tip in one direction and a winner emerges. Therefore, the Committee recommend that competitive behaviour needs to be evaluated *ex ante* before markets end up monopolized instead of the *ex post* evaluation being carried out at present.

Defining Systemically Important Digital Intermediaries (SIDIs)/Digital Gatekeepers

2. The Committee opine that, India must identify the small number of leading players or market winners that can negatively influence competitive conduct in the digital ecosystem, as 'Systemically Important Digital Intermediaries (SIDIs)' based on their revenues, market capitalization, and number of active

business and end users. The Committee further feel that India should also adopt definitions to ex-ante regulate the behaviour of systemically important digital intermediaries as has already been done by various legislations across the world. The Committee, thus recommend that stakeholders, working with the Competition Commission of India (CCI) and the Central Government, must collaborate to arrive at a reasonable definition of SIDIs. Further, the SIDI within certain fixed months of its online platform being designated as a 'Systemically Important Digital Intermediary', and thereafter annually, submit a report to the Commission describing in a detailed and transparent manner the measures it has implemented to comply with its mandatory obligations. The Systemically Important Digital Intermediary operator should also publish on its website a non-confidential summary of the report.

Anti-Steering Provisions

3. The Committee understand that anti-steering provisions are clauses whereby a platform prevents the business users of the platforms from 'steering' its consumers to offers other than those provided by the platform that may be cheaper or otherwise potentially attractive alternative in terms of a better interface. The Committee thus recommend that an SIDI should not condition access to the platform or preferred status or placement on the platform on the purchase or use of other products or services offered by the platform that are not part of or intrinsic to the platform.

Self Preferencing/Platform Neutrality

4. The Committee understand that self preferencing is a practice whereby a platform favours its own services or its subsidiaries directly or indirectly in

situations when it has a dual role of providing the platform and competing on the same platform. The Committee opine that platform neutrality must be ensured at all costs as otherwise it can lead to a negative effect on downstream markets, as their profits decline and an unfair advantage is provided to leading player i.e. the platform itself. The Committee strongly recommend that an SIDI must not favour its own offers over the offers of its competitors when mediating access to supply and sales markets, in particular, when presenting its own offers in a more favourable manner; and when exclusively pre-installing its own offers on devices or integrating them in any other way in offers provided by the platform.

<u>Bundling and Tying</u>

5. The Committee note that bundling and tying are prevalent across sectors in the digital market creating asymmetry in pricing, binding developers into taking all services from app store operators and removing competition from the market thus harming innovation and consumer interest. Further, bundling and tying enable leading players to leverage their market power in one core platform service to another. The Committee, thus, are of the view that an SIDI should not force business users or end users to subscribe to, or register with, any further services as a condition for being able to use, access, sign up for or registering with any of that platform's core platform service.

<u>Data Usage</u>

6. The Committee would like to highlight that the data advantage of market leaders, which/who have amassed wealth of personal data over a period of

time, overshadows the offerings of newer platforms in terms of quality and data fed personalization, due to which the big tends to get bigger while a small entrant struggles to attain a critical mass of users and user data. Thus, in the interest of fairplay and to ensure a level playing field, the Committee recommend that an SIDI *should not*:

a. process, for the purpose of providing online advertising services, personal data of end users using services of third parties that make use of core services of the platform;
b. combine personal data from the relevant core service of the platform with personal data from any further core services or from any other services provided by the platform or with personal data from third-party services;
c. cross-use personal data from the relevant core service in other services provided separately by the platform, including other core services of the platform, and vice-versa; and
d. sign in end users to other services of the platform in order to combine personal data, unless the end user has been presented with the specific choice and has given consent.

The Committee further opine that an SIDI *should not* use, in competition with business users, any data that is not publicly available, that is generated or provided by those business users in the context of their use of the relevant core services of the platform, or of the services provided together with the relevant core services, including data generated or provided by the end users of those business users.

Mergers and Acquisitions

7. The Committee note that certain mergers and acquisitions, particularly in the digital space besides having a deep impact on the market are not being

captured by Competition Commission of India because they do not meet the threshold of assets and turnover. The Committee recommend that an SIDI should inform the Competition Commission of India of any intended concentration, where the merging entities or the target of concentration provide services in the digital sector or enable the collection of data, irrespective of whether it is notifiable to the Commission. Further, the Committee are of the view that an SIDI should inform the Commission of such a concentration prior to its implementation and following the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest.

Pricing /Deep Discounting

8. The Committee feel that deep discounting by platforms with market power is a matter of concern when discounts are discriminatory and push prices to below cost levels in certain product categories, thus affecting offline and online retailer's ability to compete. The Committee thus recommend that an SIDI should not limit business users from differentiating commercial conditions on its platform, including price, increased commissions, de-listing, and other equivalent terms and conditions. Further, an SIDI should not prevent business users from offering the same products or services to end users through third-party online intermediation services or through their own direct online sales channel at prices or conditions that are different from those offered through the online intermediation services of the platform.

Exclusive Tie-ups

9. The Committee understand that exclusive tie-ups by major digital platforms can foreclose markets and constrict competition and can ultimately lead to increased prices for the end-user. The Committee thus recommend that an SIDI should not prevent business users from offering the same products or services to end users through third-party online intermediation services or through their own direct online sales channel at prices or conditions that are different from those offered through the online intermediation services of the platform, so that fair market conditions prevail.

Search and Ranking Preferencing

10. The Committee note that keywords which can either be a single word or a phrase play a critical role in search and ranking preferencing as that is what are used to match with the terms people are searching for in the search bar. Also, selecting high quality, relevant keywords for advertising campaigns can help advertisers reach the right customers at the right time. The Committee thus recommend that an SIDI must provide to any third-party undertaking providing online search engines, at their request, with access to fair, reasonable and non-discriminatory terms to ranking, query, click and view data in relation to free and paid search generated by end users on its online search engines. Further, any such query, click and view data that constitutes personal data should be anonymised and an SIDI, particularly those providing search and ranking functionality should not treat the products, services, or lines of business of the platform more favourably relative to those of another business user and in a manner that is

inconsistent with the neutral, fair, and non-discriminatory treatment of all business users.

Third-party Applications

11. The Committee note that gatekeepers have been found to restrict the installation or operation of third-party applications. The Committee opine that an SIDI should allow and technically enable the installation and effective use of third-party software applications or software application stores using, or interoperating with, its operating system and allow those software applications or software application stores to be accessed by means other than the relevant core services of that platform. Further, the Committee recommend that an exception may only be made in case of preventing data from the SIDI or another business user from being transferred to government of a foreign adversary.

Furthermore, an SIDI should, where applicable, not prevent the downloaded third-party software applications or software application stores from prompting end users to decide whether they want to set that downloaded software application or software application store as their default. It should technically enable end users who must themselves decide to set that downloaded software application or software application store as their default to carry out that change easily to ensure transparency.

Advertising Policies

12. The Committee note that the Big Tech Company's ad business is a monopolist threat as it owns every step in a system that connects ad sellers

and buyers and give the Big Tech companies an unfair edge over the market. The Committee thus recommend that an SIDI should not process, for the purpose of providing online advertising services, personal data of end users using services of third parties that make use of core services of the platform. It should provide advertisers, information on a daily basis, regarding price paid by the advertiser and the remuneration received by the publisher. It should provide advertisers and publishers with access to the performance measuring tools of the gatekeeper and the data necessary for advertisers and publishers to carry out their own independent verification of the advertisements inventory, including aggregated and non-aggregated data.

Further, the Committee note that India has diverse and numerous news publishers who get advertising revenues primarily through SIDIs and are of the opinion that regulatory provisions are required to ensure that news publishers are able to establish contracts with these SIDIs through a fair and transparent process.

Need for Digital Competition Act

13. The Committee feel that India needs to enhance its competition law to address the unique needs of digital markets. Unlike traditional markets, the economic drivers that are rampant in digital markets quickly result in a few massive players dominating vast swathes of the digital ecosystem. The Committee therefore recommend that the government should consider and introduce a Digital Competition Act to ensure a fair, transparent and

contestable digital ecosystem, which will be a boon not only for our country and its nascent start-up economy but also for the entire world.

Revamping Competition Commission of India(CCI)

14. The Committee feel that India's competition law must be enhanced to meet the requirements of restraining anti-competitive behaviour in the digital markets and hence it is necessary to strengthen the Competition Commission of India to take on the new responsibilities. The Committee would thus suggest that a specialised Digital Markets unit be established within the Commission, staffed with skilled experts, academics and attorneys, enabling the Commission to closely monitor SIDIs and emerging SIDIs, provide recommendations to the Central Government on designating SIDIs, review SIDI compliance and adjudicate on digital market cases and conduct for efficient and effective monitoring of digital markets *per se*. While doing so, the Committee would also expect that similar unfair practices of other digital players, even though not specifically designated as SIDIs, should also be generally kept track of, monitored and acted upon in larger consumer interest.

New Delhi
19 December 2022
28 Agrahayana, 1944 (Saka)

Shri Jayant Sinha
Chairperson
Standing Committee on Finance

Annexure-I

Global Overview of *Ex-ante* Provisions

Defining Systemically Important Digital Intermediaries

1. The first step towards ensuring fair competitive conduct is the identification of those players in the market, that have expanded to an extent where they possibly can act as digital 'gatekeepers'. This implies that these gatekeepers hold such a position in the market that they may impact the entry of new players, and hinder the growth of existing smaller players. In this regard, some important definitions have been formulated in different legislation, around the world:

Digital Markets Act, European Union[1]:The Act defines 'gatekeepers' as:

(a) It has a significant impact on the internal market

AND

(b) It provides a core platform service which is an important gateway for business users to reach end users

AND

(c) it enjoys an entrenched and durable position in its operations, or it is foreseeable that it will enjoy such a position in the near future.

i. Further, if an undertaking achieves an annual European Union turnover equal or above EUR 7.5 billion in each of last three financial years or where its average market capitalization amounted to at least EUR 75 billion in the last financial year, it shall be said to have a significant impact on internal market (point (a) above)

ii. Secondly, undertakings providing 'core platform services' shall be those which in the last financial year, have at least 45 million monthly active end users in the Union and at least 10,000 yearly active business users established in the Union (point (b) above).

[1] The text of Digital Markets Act has been accessed from: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R1925&from=EN

iii. Thirdly, (c) above will be met if the user number threshold has been met in each of the last three financial years.

iv. Further, the Act lists down 10'core platform services' such as, intermediation services, search engines, social networking sites, etc.

American Innovation and Choice Online Bill (AICO), USA[2]: The Bill uses the term 'covered platform'. It means an "online platform that,

(A) has been designated as a covered platform under section 3(d);

(B) is owned or controlled by a person 4 that—

(i) is a publicly traded company; and

(ii)(I) at any point during the 12 months preceding a designation under section 3(d) or the 12 months preceding the filing of a complaint for an alleged violation 10 of this Act has at least—

(aa) 50,000,000 United States based monthly active users on the online platform; or

(bb) 100,000 United States-based monthly active business users on the online platform;

(II) during—

(aa) the 2 years preceding a designation under section 3(d), or the 2 years preceding the filing of a complaint for an alleged violation of this Act—

(AA) at any point, is owned or controlled by a person with United States net annual sales of greater than $550,000,000,000, adjusted for inflation on the basis of the Consumer Price Index; or

(BB) during any 180-day period during the 2-year period, an average market capitalization greater than $550,000,000,000, adjusted for inflation on the basis of the Consumer Price Index or

(bb) the 12 months preceding a designation under section 3(d), or at any point during the 12 months preceding the filing of a complaint for an alleged violation of this Act, has at least 1,000,000,000 worldwide monthly active users on the online platform; and

[2] The text of the proposed Bill has been accessed from: https://www.congress.gov/117/bills/s2992/BILLS-117s2992rs.pdf

(III) is a critical trading partner for the sale or provision of any product or service offered on or directly related to the online platform; or

(C) is owned or controlled by a person that—

(i) is not a publicly traded company; and

(ii)(I) at any point during the 12 months preceding a designation under section 3(d), or the 12 months preceding the filing of a complaint for an alleged violation of this Act has at least—

(aa) 50,000,000 United States based monthly active users on the on line platform; or

(bb) 100,000 United States-based monthly active business users on the online platform;

(II) at any point—

(aa) during the 2 years preceding a designation under section 3(d), or the 2 years preceding the filing of a complaint for an alleged violation of this Act, is owned or controlled by a person with earnings, before interest, taxes, depreciation, and amortization, in the previous fiscal year of greater than $30,000,000,000, adjusted for inflation on the basis of the Consumer Price Index; or

(bb) during the 12 months preceding a designation under section 3(d), or the 12 months preceding the filing of a complaint for an alleged violation of this Act, has at least 1,000,000,000 worldwide monthly active users on the online platform; and

(III) is a critical trading partner for the sale or provision of any product or service offered on or directly related to the online platform.

Response to the Consultation on a New Pro-Competition Regime for Digital Markets, UK: The government aims to empower the Digital Markets Unit (housed within UK Competition and Market Authority) to designate a small number of firms who are very powerful in particular digital activities, such as social media and online search, with Strategic Market Status. Although, no such firms have been designated, as yet, with this status. The Draft Digital Markets, Competition and Consumer Bill, too, does not identify as such firms.

Having identified the 'gatekeepers' or the leading players/ winners of the digital market, legislation then subject them to a list to ex-ante provisions. While certain legislations like the Digital Markets Act of the EU are highly comprehensive and address all ten ACPs identified, certain others are limited in scope.

Anti-Steering Provisions

2. ***Digital Markets Act (DMA), EU***:"The gatekeeper shall not require end users to use, or business users to use, to offer, or to interoperate with, an identification service, a web browser engine or a payment service, or technical services that support the provision of payment services, such as payment systems for in-app purchases, of that gatekeeper in the context of services provided by the business users using that gatekeeper's core platform services." (Chapter 3, Article 5, Clause 7)

American Innovation and Choice Online Act (AICO), USA: It **shall be unlawful** for a person operating a "**covered platform**" to condition access to the covered platform or preferred status or placement on the covered platform on the purchase or use of other products or services offered by the covered platform operator that are not part of or intrinsic to the covered platform. (Section 3, Clause 5)

Open App Markets Act, USA[3]: "A **Covered Company shall not—**

(a) require developers to use or enable an In-App Payment System owned or controlled by the Covered Company or any of its business partners as a condition of the distribution of an App on an App Store or accessible on an operating system;

(b) require as a term of distribution on an App Store that pricing terms or conditions of sale be equal to or more favourable on its App Store than the terms or conditions under another App Store; or

(c) take punitive action or otherwise impose less favourable terms and conditions against a developer for using or offering different pricing terms or conditions of sale through another In-App Payment System or on another App Store." (Section 3, Clause (a))

[3] The text of the proposed Bill accessed from: https://www.congress.gov/117/bills/s2710/BILLS-117s2710rs.pdf

Amendments to Telecommunications Act, South Korea: Includes to the list of **prohibited Acts-**

(a) Act of app market business operators forcing a specific method of payment onto the Business providers of mobile contents, etc. by taking advantage of their position in transactions. (Article 50)

10th amendment of the German Competition Act: It introduced Section 19a to the Act to prohibit certain conduct patterns of **platforms with "paramount importance for competition across markets"**: The Bundeskartellamt may **prohibit** such undertaking from-

(a) linking the use of an offer provided by the undertaking to the automatic use of another offer provided by the undertaking which is not necessary for the use of the former offer, without giving the user of the offer sufficient choice as to whether and how the other offer is to be used (Section 19(a), Clause (2)(3))

(b) refusing the interoperability of products or services or data portability, or making it more difficult, and in this way impeding competition; (Section 19(a), Clause (2)(5))

Platform Neutrality/ Self-Preferencing

3. ***DMA, EU***: The gatekeeper shall not treat more favourably, in ranking and related indexing and crawling, services and products offered by the gatekeeper itself than similar services or products of a third party. The gatekeeper shall apply transparent, fair and non-discriminatory conditions to such ranking. (Chapter III, Article 6, Clause 5)

American Innovation and Choice Online Act (AICO), USA: It shall be unlawful for a person operating a covered platform in or affecting commerce to,

(i) preference the products, services, or lines of business of the covered platform operator over those of another business user on the covered platform in a manner that would materially harm competition; (Section 3, Clause (a) (1))

(ii) limit the ability of the products, services, or lines of business of another business user to compete on the covered platform relative to the products,

services, or lines of business of the covered platform operator in a manner that would materially harm competition; (Section 3, Clause (a) (2))

(iii) discriminate in the application or enforcement of the terms of service of the covered platform among similarly situated business users in a manner that would materially harm competition. (Section 3, Clause (a) (3))

(iv) condition access to the covered platform or preferred status or placement on the covered platform on the purchase or use of other products or services offered by the covered platform operator that are not part of or intrinsic to the covered platform (Section 3, Clause (a)(5))

Open App Markets Act, USA: A Covered Company shall not provide unequal treatment of Apps in an App Store through unreasonably preferencing or ranking the Apps of the Covered Company or any of its business partners over those of other Apps in organic search results (Section 3, Clause (e) (1)). Unreasonably preferencing includes applying ranking schemes or algorithms that prioritize Apps based on a criterion of ownership interest by the Covered Company or its business partners but it does not include clearly disclosed advertising (Section3, Clause (e)(2)).

10th amendment of the German Competition Act: The Bundeskartellamt may prohibit undertakings of paramount significance from

"1. favouring its own offers over the offers of its competitors when mediating access to supply and sales markets, in particular

(a) presenting its own offers in a more favourable manner;

(b) exclusively pre-installing its own offers on devices or integrating them in any other way in offers provided by the undertaking" (Section 19(a), Clause 2).

Bundling and Tying

4. ***DMA, EU***: "The gatekeeper shall not require business users or end users to subscribe to, or register with, any further core platform services listed in the designation decision pursuant to Article 3(9) or which meet the thresholds in Article 3(2), point (b), as a condition for being able to use, access, sign up for or registering with any of that gatekeeper's core platform services listed pursuant to that Article." (Chapter III, Article 5, Clause 8)

"The gatekeeper shall allow and technically enable end users to easily un-install any software applications on the operating system of the gatekeeper, without prejudice to the possibility for that gatekeeper to restrict such un-installation in relation to software applications that are essential for the functioning of the operating system or of the device and which cannot technically be offered on a standalone basis by third parties.

It shall allow and technically enable end users to easily change default settings on the operating system, virtual assistant and web browser of the gatekeeper that direct or steer end users to products or services provided by the gatekeeper." (Chapter III, Article 6, Clause 3)

"The gatekeeper shall not restrict technically or otherwise the ability of end users to switch between, and subscribe to, different software applications and services that are accessed using the core platform services of the gatekeeper, including as regards the choice of Internet access services for end users." (Chapter III, Article 6, Clause 6)

American Innovation and Choice Online Act (AICO), USA: It shall be unlawful for a person operating a covered platform in or affecting commerce to:

(a) "condition access to the covered platform or preferred status or placement on the covered platform on the purchase or use of other products or services offered by the covered platform operator that are not part of or intrinsic to the covered platform;" (Section 3, Clause (a)(5))

(b) "materially restrict or impede covered platform users from uninstalling software applications that have been preinstalled on the covered platform or changing default settings that direct or steer covered platform users to products or services offered by the covered platform operator, unless necessary" (Section 3, Clause (a)(8))

10th amendment of the German Competition Act: The Bundeskartellamt may prohibit undertakings of paramount significance from taking measures that impede other undertakings in carrying out their business activities on supply or sales markets where the undertaking's activities are of relevance for accessing such

markets, in particular taking measures that result in the exclusive pre-installation or integration of offers provided by the undertaking. (Section 19(a), Clause (2))

An SIDI shall allow and technically enable end users to easily un-install any software applications on the operating system of the platform, without prejudice to the possibility for that platform to restrict such un-installation in relation to software applications that are essential for the functioning of the operating system or of the device and which cannot technically be offered on a standalone basis by third parties. It shall allow and technically enable end users to easily change default settings on the operating system, virtual assistant and web browser of the platform that direct or steer end users to products or services provided by the platform.

An SIDI shall not restrict technically or otherwise the ability of end users to switch between, and subscribe to, different software applications and services that are accessed using the core services of the platform, including as regards the choice of Internet access services for end users.

Data Usage

5. ***DMA, EU:*** "The gatekeeper shall not do any of the following:

(a) process, for the purpose of providing online advertising services, personal data of end users using services of third parties that make use of core platform services of the gatekeeper;

(b) combine personal data from the relevant core platform service with personal data from any further core platform services or from any other services provided by the gatekeeper or with personal data from third-party services;

(c) cross-use personal data from the relevant core platform service in other services provided separately by the gatekeeper, including other core platform services, and vice-versa; and

(d) sign in end users to other services of the gatekeeper in order to combine personal data,

unless the end user has been presented with the specific choice and has given consent" (Chapter III, Article 5, Clause 2)

"The gatekeeper shall not use, in competition with business users, any data that is not publicly available, that is generated or provided by those business users in the context of their use of the relevant core platform services or of the services provided together with, or in support of, the relevant core platform services, including data generated or provided by the end users of those business users" (Chapter III, Article 6, Clause 2)

American Innovation and Choice Online Act (AICO), USA: It shall be unlawful for a person operating a covered platform in or affecting commerce to:

> "use non-public data that are obtained from or generated on the covered platform by the activities of a business user or by the interaction of a covered platform user with the products or services of a business user to offer, or support the offering of, the products or services of the covered platform operator that compete or would compete with products or services offered by business users on the covered platform" (Section 3, Clause (a)(6))
>
> "materially restrict or impede a business user from accessing data generated on the covered platform by the activities of the business user, or through an interaction of a covered platform user with the products or services of the business user, such as by establishing contractual or technical restrictions that prevent the portability by the business user to other systems or applications of the data of the business user" (Section 3, Clause (a)(7))

Open App Markets App, USA: "A covered company shall not use non public business information derived from a third-party app for the purpose of competing with that app." (Section 3, Clause (c))

10th amendment of the German Competition Act: The Bundeskartellamt may prohibit undertakings of paramount significance from

> "creating or appreciably raising barriers to market entry or otherwise impeding other undertakings by processing data relevant for competition that have been collected by the undertaking, or demanding terms and conditions that permit such processing, in particular

(a) making the use of services conditional on the user agreeing to the processing of data from other services of the undertaking or a third-party provider without

giving the user sufficient choice as to whether, how and for what purpose such data are processed;

(b) processing data relevant for competition received from other undertakings for purposes other than those necessary for the provision of its own services to these undertakings without giving these undertakings sufficient choice as to whether, how and for what purpose such data are processed;" (Section 19(a), Clause 4)

The Act also prohibits such undertakings from "refusing the interoperability of products or services or data portability, or making it more difficult, and in this way impeding competition". (Section 19(a), Clause 5)

Acquisitions and Mergers

6. ***DMA, EU***: "A gatekeeper shall inform the Commission of any intended concentration within the meaning of Article 3 of Regulation (EC) No 139/2004, where the merging entities or the target of concentration provide core platform services or any other services in the digital sector or enable the collection of data, irrespective of whether it is notifiable to the Commission under that Regulation or to a competent national competition authority under national merger rules.

A gatekeeper shall inform the Commission of such a concentration prior to its implementation and following the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest." (Chapter III, Article 14, Clause 1)

"The information provided by the gatekeeper pursuant to paragraph 1 shall at least describe the undertakings concerned by the concentration, their Union and worldwide annual turnovers, their fields of activity, including activities directly related to the concentration, and the transaction value of the agreement or an estimation thereof, along with a summary of the concentration, including its nature and rationale and a list of the Member States concerned by the concentration.

The information provided by the gatekeeper shall also describe, for any relevant core platform services, their Union annual turnovers, their numbers of yearly active business users and their numbers of monthly active end users, respectively." (Chapter III, Article 14, Clause 2)

The Ending Platform Monopolies Bill, USA: It shall be unlawful for a covered platform operator to own, control, or have a beneficial interest in a line of business other than the covered platform that utilizes the covered platform for the sale or provision of products or services; offers a product or service that the covered platform requires a business user to purchase or utilize as a condition for access to the covered platform, or as a condition for preferred status or placement of a business user's product or services on the covered platform; or gives rise to a conflict of interest.

The term "conflict of interest" includes the conflict of interest that arises when a covered platform operator owns or controls a line of business, other than the covered platform; and the covered platform's ownership or control of that line of business creates the incentive and ability for the covered platform to:

(a) advantage the covered platform operator's own products, services, or lines of business on the covered platform over those of a competing business or a business that constitutes nascent or potential competition to the covered platform operator; or
(b) exclude from, or disadvantage, the products, services, or lines of business on the covered platform of a competing business or a business that constitutes nascent or potential competition to the covered platform operator

UK (Government's response to Consultation on a pro-competition regime for digital markets): Firms with Strategic Market Status (SMS) will only have to report their most significant transactions prior to completion. This shall apply when the SMS firm acquires over a 15% equity or voting share after the transaction, the value of the SMS firm's holding is over £25m, and the transaction meets a UK nexus test.

Pricing/Deep Discounting

7. ***DMA, EU:*** "To ensure that business users of online intermediation services of gatekeepers can freely choose alternative online intermediation services or direct online sales channels and differentiate the conditions under which they offer their products or services to end users, it should not be accepted that gatekeepers limit business users from choosing to differentiate commercial conditions, including price. Such a restriction should apply to any measure with equivalent effect, such as increased commission rates or de-listing of the offers of business users." (Paragraph 39)

"Pricing or other general access conditions should be considered unfair if they lead to an imbalance of rights and obligations imposed on business users or confer an advantage on the gatekeeper which is disproportionate to the service provided by the gatekeeper to business users or lead to a disadvantage for business users in providing the same or similar services as the gatekeeper" (Paragraph 62)

"The gatekeeper shall not prevent business users from offering the same products or services to end users through third-party online intermediation services or through their own direct online sales channel at prices or conditions that are different from those offered through the online intermediation services of the gatekeeper." (Chapter 3, Article 5, Clause 3)

Open App Markets App, USA: A covered company shall not require as a term of distribution on an app store that pricing terms or conditions of sale be equal to or more favourable on its app store than the terms or conditions under another app store; or take punitive action or otherwise impose less favourable terms and conditions against a developer for using or offering different pricing terms or conditions of sale through another in-app payment system or on another app store. (Section 3, Clause (a)(2), (3))

Exclusive Tie-ups

8. ***DMA, EU***: "The gatekeeper shall not prevent business users from offering the same products or services to end users through third-party online intermediation

services or through their own direct online sales channel at prices or conditions that are different from those offered through the online intermediation services of the gatekeeper." (Chapter III, Article 5, Clause 3)

Open App Markets App, USA: A Covered Company shall not:

(a) require as a term of distribution on an App Store that pricing terms or conditions of sale be equal to or more favourable on its App Store than the terms or conditions under another App Store (Section 3(a)(2))

(b) take punitive action or otherwise impose less favourable terms and conditions against a developer for using or offering different pricing terms or conditions of sale through another In-App Payment System or on another App Store (Section 3(1)(3)).

Search and Ranking Preferencing

9. ***DMA, EU***: "The gatekeeper shall provide to any third-party undertaking providing online search engines, at their request, with access on fair, reasonable and non-discriminatory terms to ranking, query, click and view data in relation to free and paid search generated by end users on its online search engines. Any such query, click and view data that constitutes personal data shall be anonymised." (Chapter 3, Article 6, Clause 11)

American Innovation and Choice Online Act (AICO), USA: It shall be unlawful for a person operating a covered platform in connection with any covered platform user interface, including search or ranking functionality offered by the covered platform, treat the products, services, or lines of business of the covered platform operator more favourably relative to those of another business user and in a manner that is inconsistent with the neutral, fair, and non-discriminatory treatment of all business users. (Section 3, Clause 9)

Restricting third-party Applications

10. ***DMA, EU:*** The gatekeeper shall allow and technically enable the installation and effective use of third-party software applications or software application stores using, or interoperating with, its operating system and allow those software

applications or software application stores to be accessed by means other than the relevant core platform services of that gatekeeper.

The gatekeeper shall, where applicable, not prevent the downloaded third-party software applications or software application stores from prompting end users to decide whether they want to set that downloaded software application or software application store as their default. The gatekeeper shall technically enable end users who decide to set that downloaded software application or software application store as their default to carry out that change easily. (Chapter 3, Article 6, Clause 4)

American Innovation and Choice Online Act (AICO), USA:It shall be unlawful for covered platform to materially restrict or impede covered platform users from uninstalling software applications that have been preinstalled on the covered platform or changing default settings that direct or steer covered platform users to products or services offered by the covered platform operator, unless necessary—

(a) for the security or functioning of the covered platform;

(b) to prevent data from the covered platform operator or another business user from being transferred to the Government of the People's Republic of China or the government of a foreign adversary

Open App Markets Act, USA: A covered company that controls the operating system or operating system configuration on which its app store operates shall allow and provide readily accessible means for users of that operating system to—

(a) choose third-party apps or app stores as defaults for categories appropriate to the app or app store;

(b) install third-party apps or app stores through means other than its app store; and

(c) hide or delete apps or app stores provided or pre-installed by the app store owner or any of its business partners

Advertising Policies

11. ***DMA, EU:*** The gatekeeper shall not process, for the purpose of providing online advertising services, personal data of end users using services of third parties

that make use of core platform services of the gatekeeper. (Chapter 3, Article 5, Clause 2(a))

The gatekeeper shall provide advertisers, information on a daily basis, regarding price paid by the advertiser and the remuneration received by the publisher. (Chapter 3, Article 5, Clause 9)

The gatekeeper shall provide advertisers and publishers with access to the performance measuring tools of the gatekeeper and the data necessary for advertisers and publishers to carry out their own independent verification of the advertisements inventory, including aggregated and non-aggregated data. (Chapter 3, Article 6, Clause 8)

Minutes of the Seventeenth sitting of the Standing Committee on Finance (2021-22) The Committee sat on Thursday, the 28th April, 2022 from 1100 hrs. to 1315 hrs. in Committee Room 'C', Parliament House Annexe, New Delhi.

PRESENT

Shri Jayant Sinha – Chairperson

LOK SABHA

2. Shri S.S. Ahluwalia
3. Dr. Subhash Ramrao Bhamre
4. Shri Gaurav Gogoi
5. Shri Manoj Kotak
6. Shri Pinaki Misra
7. Shri Ravi Shankar Prasad
8. Prof. Sougata Ray
9. Shri Gopal Shetty
10. Dr. (Prof.) Kirit Premjibhai Solanki
11. Shri Manish Tewari

RAJYA SABHA

12. Shri A. Navaneethakrishnan
13. Shri Praful Patel
14. Dr. Amar Patnaik
15. Shri Mahesh Poddar
16. Dr. C.M. Ramesh
17. Shri G.V.L Narasimha Rao
18. Smt. Ambika Soni

SECRETARIAT

1. Shri Siddharth Mahajan - Joint Secretary
2. Shri Ramkumar Suryanarayanan - Director
3. Shri Kh. Ginlal Chung - Deputy Secretary

LIST OF WITNESSES

MINISTRY OF CORPORATE AFFAIRS

1. Shri Rajesh Verma, Secretary
2. Shri Manoj Pandey, Joint Secretary (Competition)

MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY (MeitY)

1. Dr. Rajendra Kumar, Additional Secretary
2. Shri Rakesh Maheshwari, Scientist 'G' & GC

COMPETITION COMMISSION OF INDIA

1. Shri Ashok Kumar Gupta, Chairperson
2. Ms. Jyoti Jindgar, Secretary (I/C) & Adviser (Eco)

3. At the outset, the Chairperson welcomed the Members and the witnesses to the sitting of the Committee. After the customary introduction of the witnesses, the Chairperson, Competition Commission of India made a powerpoint presentation on the subject 'Anti-Competitive practices by Big Tech Companies'. The major issues discussed include reviewing the existing framework of Competition Law Review Committee (CLRC), need for synergy between all departments dealing with the digital ecosystem, maintaining the fine balance between innovation and regulation, need for mechanism to check abuse of dominance and power in markets, need for comparative analysis of competition laws in EU, US and Australia versus that of India. Issue of urgent need for filling up vacancies, judicial member post in particular, in Competition Commission of India and bringing in domain expertise within it has also been raised.

4. The witnesses responded to the queries raised by the Members on the subject. The Chairperson directed the witnesses to furnish written replies to the queries which could not be readily replied by them during the sitting.

The witnesses then withdrew.

The Committee then adjourned.

A verbatim record of the proceedings has been kept.

Minutes of the Nineteenth sitting of the Standing Committee on Finance (2021-22)
The Committee sat on Thursday, the 19th May, 2022 from 1200 hrs. to 1600 hrs. in Main Committee Room, Parliament House Annexe, New Delhi.

PRESENT

Shri Jayant Sinha – Chairperson

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri Subhash Chandra Baheria
4. Dr. Subhash Ramrao Bhamre
5. Shri Manoj Kotak
6. Shri Pinaki Misra
7. Shri Ravi Shankar Prasad
8. Prof. Sougata Ray
9. Shri Gopal Shetty
10. Shri Manish Tewari
11. Shri Rajesh Verma

RAJYA SABHA

12. Shri Ahmad Ashfaque Karim
13. Shri Sushil Kumar Modi
14. Dr. Amar Patnaik
15. Shri Mahesh Poddar
16. Shri G.V.L Narasimha Rao
17. Smt. Ambika Soni

SECRETARIAT

1. Shri Siddharth Mahajan - Joint Secretary
2. Shri Kulmohan Singh Arora - Additional Director
3. Shri Kh. Ginlal Chung - Deputy Secretary

LIST OF WITNESSES

1200 hrs - 1230 hrs

The Federation of Hotel & Restaurant Associations of India (FHRAI)

1. Mr. Paramjit Singh Ghai, Executive Committee Member
2. Mr. Nirav Gandhi, Executive Committee Member
3. Mr. Jaison Chacko, Secretary General

1230 hrs - 1330 hrs

Digital News Publishers Association (DNPA)

1. Ms. Kalli Purie, Vice Chairperson, India Today Group
2. Mr. Pawan Agarwal , Dy Managing Director ,DB Corp Ltd.
3. Mr. Tanmay Maheshwari , Managing Director , Amar Ujala Ltd.
4. Mr. Anil Malhotra , Head – Public & Regulatory Affairs , Zee Entertainment Limited
5. Mr. Puneet Jain , Chief Executive Officer, HT Digital News
6. Ms. Sujata Gupta, Secretary General, Digital News Publishers Association

1400 hrs – 1500 hrs

Confederation of All India Traders (CAIT)

1. Shri Praveen Khandelwal, National Secretary General
2. Shri Sumit Agarwal, National Secretary
3. Shri Abir Roy, Advisor
4. Shri Arvinder Khurana, Vice President
5. Ms. Smita Ahuja, Head, Coordination

1500 hrs onwards

Alliance of Digital India Foundation (ADIF)

1. Mr. Sijo Kuruvilla, Executive Director
2. Ms. Amanat Khullar, Head, Advocacy and Editorial
3. Mr. Tom Thomas, Head, Policy and Research

Newspapers Association of India (NAI)

1. Dr. Vipin Gaur, General Secretary

3. At the outset, the Chairperson welcomed the Members and the witnesses to the sitting of the Committee. After the customary introduction of the witnesses, the Chairperson initiated the discussion on the subject 'Anti-Competitive Practices by Big-tech companies'. The Committee interacted with representatives of various industry associations in four parts and deliberated on the anti competitive issues cutting across industries/sectors. The major issues discussed with the various associations included competitive conduct and behavior, platform neutrality, dynamic pricing, changes required in competition law in light of dominant big-tech firms, listing, deep discounting, predatory pricing, loss funding, balance between disruptions caused by e-commerce to conventional stores and benefits to consumers, opportunity creation by technology, fierce pricing by aggregators, regulation of business in digital space, bundling, issues of ownership of data generated on various aggregator platforms, hidden charges levied by the platforms, comparisons with other jurisdictions worldwide, strong revenue market share of Google in Indian digital advertising *vis-à-vis* the weak revenue models of domestic publishing industry, non-transparency of big tech giants, uniform technical standards, access through technology, idea of enforcing a market share cap, capability of upcoming ONDC (Open Network for Digital Commerce), development of e-commerce portal 'Bharat e-market' funded entirely by Indian traders to empower traders and consumers, idea of allowing cluster approach in co-operative systems, hurdle to small traders without any GST registration to incorporate in e-commerce and penalties being treated as recurring cost by Big-Techs.

4. The witnesses responded to the queries raised by the Members on the subject. The Chairperson directed the witnesses to furnish written replies to the queries which could not be readily replied by them during the sitting.

The witnesses then withdrew.

The Committee then adjourned.

A verbatim record of the proceedings has been kept.

Minutes of the Twenty-first sitting of the Standing Committee on Finance (2021-22)
The Committee sat on Thursday, the 21st July, 2022 from 1500 hrs. to 1730 hrs. in Main Committee Room, Parliament House Annexe, New Delhi.

PRESENT

Shri Jayant Sinha – Chairperson

LOK SABHA

2. Shri S.S. Ahluwalia
3. Dr. Subhash Ramrao Bhamre
4. Smt. Sunita Duggal
5. Shri Pinaki Misra
6. Shri Ravi Shankar Prasad
7. Shri Gopal Shetty
8. Dr. (Prof.) Kirit Premjibhai Solanki
9. Shri Parvesh Sahib Singh

RAJYA SABHA

10. Shri Ahmad Ashfaque Karim
11. Shri Sushil Kumar Modi
12. Dr. Amar Patnaik
13. Dr. C.M. Ramesh
14. Shri G.V.L Narasimha Rao

SECRETARIAT

1. Shri Siddharth Mahajan - Joint Secretary
2. Shri Ramkumar Suryanarayanan - Director
3. Shri Kulmohan Singh Arora - Additional Director

LIST OF WITNESSES

Paytm

1. Shri Vijay Shekhar Sharma, CEO Paytm
2. Shri Dharmender Jhamb, Vice President Paytm

OLA

1. Mr. Arun Kumar G R, Chief Financial Officer
2. Ms. Sukirti Singh, Senior Manager
3. Mr. Rajneesh Pathak, Director

MakeMyTrip India Pvt. Ltd

1. Mr. Deep Kalra, Group Chairman and Chief Mentor
2. Mr. Rajesh Magow, Co-Founder and Group CEO
3. Mr. Mohit Kabra, Group Chief Financial Officer

Zomato

1. Mohit Gupta - Co-Founder & Head of New Businesses
2. Akshant Goyal - Chief Financial Officer (CFO)

OYO

1. Mr Ritesh Agarwal, Founder and Group CEO
2. Mr Abhinav Sinha, Chief Operating Officer and Chief Product Officer
3. Mr Rakesh Prusti, General Counsel

Swiggy

1. Ms. Avantika Bajaj, Vice President and Group General Counsel
2. Mr. Amal Sivaji, Director Public Policy

Flipkart

1. Shri Kalyan Krishnamurthy, Group CEO; Flipkart Group.
2. Shri Rajneesh Kumar, Group CCAO (Chief Corporate Affairs Officer), Flipkart Group.
3. Dr Tafheem Siddiqui, Director (Policy), Flipkart Group.

All India Gaming Federation (AIGF)

1. Roland Landers CEO - AIGF
2. Dhruv Garg Advisor legal & policy - AIGF
3. Sarvjeet Singh Director & Head Public Policy - Mobile Premier League.
4. Shri Deepak Upadhyay, Representatives, Delhi Secretariat-AIGF

3. At the outset, the Chairperson welcomed the Members and the witnesses to the sitting of the Committee. After the customary introduction of the witnesses, the Chairperson initiated the discussion on the subject 'Anti-Competitive Practices by Big Tech Companies' and the Committee deliberated upon the issues of predatory pricing and deep discounting for digital markets/platforms, digital platform neutrality including aspects such as favouring certain services over others, creating a level playing field for all the partners and ensuring that the pricing is done in a fair way across entire platform; ex ante versus ex post regulations, issue of data as a barrier to entry for others to come into market place, zero or subsidized pricing, definition of Market and big tech companies, issue of diluting intellectual property through advertising programmes, protection of small shop owners/retailers partner, addiction of e-gaming, difference between game of chance and game of skill as a pay to play format, non functioning of mandated panic button in cabs, ride cancellation policies of cab aggregators, poor quality control of cabs, proliferation of unregulated and unlicensed drivers, issues pertaining to opaque and unfair terms and conditions of e-commerce companies, problems of unregulated online gaming industry, predatory advertising, disclosure norms of data including privacy and sharing of data, issue of denial of services to customers as well as small partners, regulation of advertising on digital space and mandatory billing system in gaming space.

4. The witnesses responded to the queries raised by the Members on the subject. The Chairperson directed the witnesses to furnish written replies to the queries which could not be readily replied by them during the sitting.

The witnesses then withdrew.

The Committee then adjourned.

A verbatim record of the proceedings has been kept.

Minutes of the Twenty-Second sitting of the Standing Committee on Finance (2021-22) The Committee sat on Thursday, the 28th July, 2022 from 1500hrs. to 1630 hrs. in Main Committee Room, Parliament House Annexe, New Delhi.

PRESENT

Shri Jayant Sinha – Chairperson

LOK SABHA

2. Shri Subhash Chandra Baheria
3. Shri Shrirang Appa Barne
4. Smt. Sunita Duggal
5. Shri Manoj Kotak
6. Shri Pinaki Misra
7. Shri Gopal Shetty
8. Dr. (Prof.) Kirit Premjibhai Solanki
9. Shri Manish Tewari
10. Shri Rajesh Verma

RAJYA SABHA

11. Shri Ahmad Ashfaque Karim
12. Shri Sushil Kumar Modi
13. Dr. Amar Patnaik
14. Dr. C.M. Ramesh

SECRETARIAT

1. Shri Siddharth Mahajan - Joint Secretary
2. Shri Ramkumar Suryanarayanan - Director
3. Shri Kulmohan Singh Arora - Additional Director

PART I

LIST OF WITNESSES

1500 hrs – 1600 hrs

Alliance of Digital India Foundation (ADIF)

1. Shri Sijo Kuruvilla, Executive Director, ADIF
2. Dr. Ritesh Malik, Director, ADIF
3. Shri Jibin Jose VP- Startup Relations, ADIF

2. At the outset, the Chairperson welcomed the Members and the witnesses to the sitting of the Committee. After the customary introduction of the witnesses, the Chairperson initiated the discussion on the subject 'Anti-Competitive Practices by Big Tech Companies' and the major issues discussed include the differences between digital markets and traditional markets, the network effects of Big Tech Companies and their ability to enforce anti-competitive practices, issues of restrictions in contracts with developers, effectiveness of gatekeepers and existing legislations and the need for ex ante legislation and separate standard of operation etc.

3. The witnesses responded to the queries raised by the Members on the subject. The Chairperson directed the witnesses to furnish written replies to the queries which could not be readily replied by them during the sitting.

The witnesses then withdrew.

PART II

1600 hrs onwards

Ministry of Corporate Affairs

1. Shri Rajesh Verma, Secretary
2. Shri Manoj Pandey, Joint Secretary
3. Dr. Abhijit Phukon, Director

Competition Commission of India (CCI)

1. Shri Ashok Kumar Gupta, Chairperson

2. Ms. Jyoti Jindgar, Secretary (I/C)
3. Ms. Payal Malik, Adviser (Eco)
4. Sh. (Dr.) Kapil Dev Singh, Director (Law)

5. After the customary introduction of the witnesses, the Committee took oral evidence of the representatives of Ministry of Corporate Affairs and Competition Commission of India on the subject 'Anti-Competitive practices by Big Tech Companies'. The major issues discussed include whether digital markets require additional laws, whether the laws used around the world including gatekeepers can be applicable to India, the need for CCI to evolve to deal with changes in digital markets, feasibility of fast track courts or tribunals solely dedicated to anti-competitive practices in digital markets etc.

6. The witnesses responded to the queries raised by the Members on the subject. The Chairperson directed the witnesses to furnish written replies to the queries which could not be readily replied by them during the sitting.

The witnesses then withdrew.

PART III

7. XX XX XX XX XX XX
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The Committee then adjourned.

A verbatim record of the proceedings has been kept.

Minutes of the Twenty-fourth sitting of the Standing Committee on Finance (2021-22) The Committee sat on Tuesday, the 23rd August, 2022 from 1430 hrs. to 1730 hrs. in Main Committee Room, Parliament House Annexe, New Delhi.

PRESENT

Shri Jayant Sinha – Chairperson

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri Gaurav Gogoi
4. Shri Manoj Kotak
5. Shri Pinaki Misra
6. Prof. Sougata Ray
7. Shri Gopal Shetty
8. Shri Manish Tewari
9. Shri Rajesh Verma

RAJYA SABHA

10. Dr. Amar Patnaik
11. Dr. C.M. Ramesh
12. Shri G.V.L Narasimha Rao

SECRETARIAT

1. Shri Siddharth Mahajan - Joint Secretary
2. Shri Ramkumar Suryanarayanan - Director
3. Shri Kulmohan Singh Arora - Additional Director

LIST OF WITNESSES

Amazon India

1. Mr. Manish Tiwary, Country Manager - India Consumer Business
2. Mr. Chetan Krishnaswamy, VP, Public Policy
3. Mr. Rakesh Bakshi, VP, Legal
4. Ms. Shravani Shekhar, Corporate Counsel, Competition

Apple India

1. Mr. Virat Bhatia , Managing Director, Strategy & Policy
2. Ms. Saloni Gupta, Head, Public Policy & Strategy
3. Mr. Prateek Hiremath, Senior Counsel – India

Facebook India

1. Mr. Rajiv Aggarwal, Head of Public Policy
2. Mr. Shivnath Thukral, Public Policy Director
3. Ms. Saanjh Purohit, Associate General Counsel

Google India

1. Dr Archana G. Gulati, Director, Government Affairs and Public Policy, Google India Pvt Ltd.
2. Ms Gitanjli Duggal, Director, Legal, Google India Pvt Ltd.

Netflix India

1. Ms. Ambika Khurana, Director & Head of India Public Policy
2. Mr. Kiran Desai, India General Counsel and Director of Business & Legal Affairs

Twitter India

1. Mr. Samiran Gupta, Senior Director, Public Policy and Philanthropy, Twitter Communications India Pvt. Ltd.
2. Ms. Shagufta Kamran, Director, Public Policy and Philanthropy, Twitter Communications India Pvt. Ltd.
3. Mr. Kapil Chaudhary, Senior Legal Counsel, Twitter Communications India Pvt. Ltd

Uber India

1. Mr. Prabhjeet Singh, President, Uber India & South Asia
2. Mr. Kanishk, Director Legal, Uber India & South Asia
3. Mr. Nitish Bhushan, Director Operations, Uber India & South Asia
4. Ms. Ridhi Darolia, Public Policy Lead, Uber India & South Asia

2. At the outset, the Chairperson welcomed the Members and the witnesses to the sitting of the Committee. After the customary introduction of the witnesses, the Chairperson initiated the discussion on the subject 'Anti-Competitive Practices by Big Tech Companies' and the major issues discussed include competitive conduct in digital markets; fundamental difference in traditional markets and digital markets; pricing power; unfair advantage to Big Techs; use of bundling and trying to gain access to and succeed in other markets; mergers and acquisitions to reduce dynamic innovation; platform neutrality and self-preferencing; App store policies; need for competition law to evolve to address and deal with digital markets; volume of permanent and temporary jobs in Big Techs; change in behavior through penalties and fines imposed; collection of Big Data and data privacy; search and ranking preferencing; advertising policies; billing policies; prohibitive barriers to entry for other players and network effects; ill-effects of lack of competition; lack of transparency in revenue sharing; need to regulate market dominance to allow local players to rise; need to amend various Acts along with Competition Commission Act; notion and definition of digital gatekeepers in the Indian context and need for ex-ante regulations in the country.

3. The witnesses responded to the queries raised by the Members on the subject. The Chairperson directed the witnesses to furnish written replies to the queries which could not be readily replied by them during the sitting.

The witnesses then withdrew.
The Committee then adjourned.

A verbatim record of the proceedings has been kept.

Minutes of the Seventh sitting of the Standing Committee on Finance (2022-23) The Committee sat on Monday, the 19th December, 2022 from 1500hrs. to 1715 hrs. in Main Committee Room, Parliament House Annexe, New Delhi.

PRESENT

Shri Jayant Sinha – Chairperson

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri Subhash Chandra Baheria
4. Dr. Subhash Ramrao Bhamre
5. Smt. Sunita Duggal
6. Shri Gaurav Gogoi
7. Shri Manoj Kishorbhai Kotak
8. Shri Pinaki Misra
9. Shri Ravi Shankar Prasad
10. Shri Gopal Chinayya Shetty
11. Dr. (Prof.) Kirit Premjibhai Solanki
12. Shri Manish Tewari
13. Shri Rajesh Verma

RAJYA SABHA

14. Dr. Radha Mohan Das Agarwal
15. Shri Raghav Chadha
16. Shri P. Chidambaram
17. Shri Damodar Rao Divakonda
18. Shri Ryaga Krishnaiah
19. Shri Sushil Kumar Modi
20. Dr. Amar Patnaik
21. Dr. C.M. Ramesh

SECRETARIAT

1. Shri Siddharth Mahajan - Joint Secretary
2. Shri Ramkumar Suryanarayanan - Director
3. Shri Kulmohan Singh Arora - Additional Director

PART I

2. XX XX XX XX XX XX

XX XX XX XX XX XX.

PART II

3. XX XX XX XX XX XX

XX XX XX XX XX XX.

The witnesses then withdrew.

3. At the outset, the Chairperson welcomed the Members to the sitting of the Committee. Thereafter, the Committee took up the draft Report on the subject 'Anti Competitive Practices by Big Tech Companies' for consideration and adoption. After some deliberations, the Committee adopted the draft Report and authorised the Chairperson to finalise and present the Report to the Parliament.

The Committee then adjourned.

A verbatim record of the proceedings has been kept.