

PRIMER 3

DO MARKETS BENEFIT FROM A NEW DIGITAL COMPETITION LAW?

EXPLORING POTENTIAL RISKS AND TRADE-OFFS

Do Markets Benefit from a New Digital Competition Law? Exploring Potential Risks and Trade-Offs

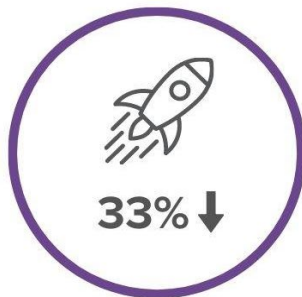
INTRODUCTION

This primer provides an overview of the unique set of risks and opportunities faced by digital firms in India. Using this context, the primer evaluates the extent to which a pre-emptive framework targeted at digital firms could impact the attainment of the Government's overarching policy objectives (such as securing consumer welfare, attracting investments, and promoting innovation).

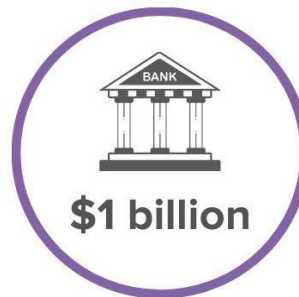
Risks and Opportunities for Indian Digital Firms: Indian digital firms are currently faced with reduced funding opportunities and increased costs of raising capital, due to the global financial slowdown. At the same time, however, India has displayed remarkable resilience in the face of global trends. This is evidenced by opportunities like sustained consumer demand, rising number of start-up IPOs and its position as a preferred destination as global supply chains reduce their dependence on China.



Risks for Indian Markets



Funding for Indian startups dropped by 33% to \$24 billion in 2022 as compared to the previous year.



Indian startups estimatedly have deposits worth about \$1 billion with the Silicon Valley Bank.



As of December 2022, India's merchandise exports declined 12.2% to \$34.5 billion, from a year ago, owing to the global recession.



Opportunities for Indian Markets



Consumer spending increased to 24771.60 Billion in the fourth quarter of 2022, aided by rising incomes and purchasing powers.



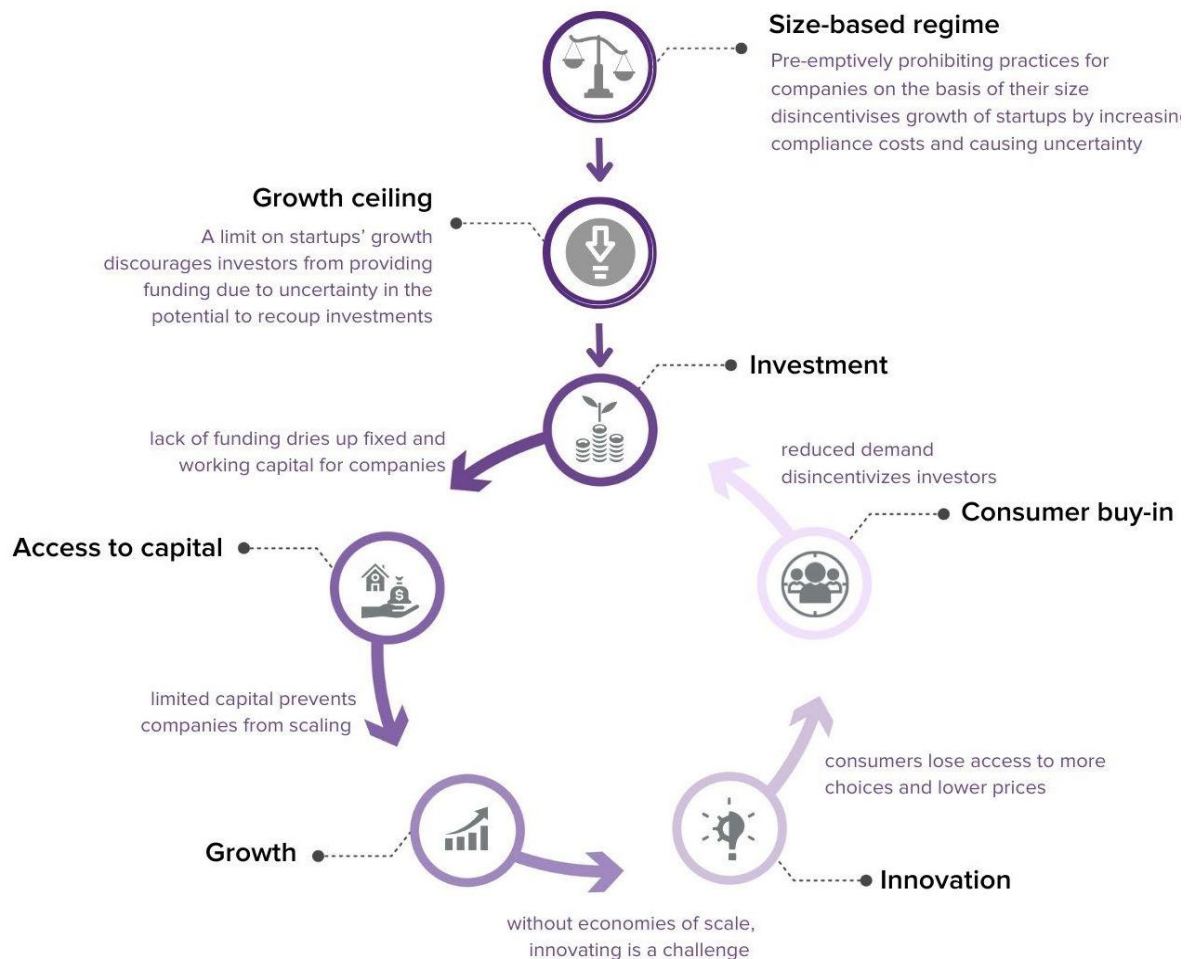
India led the world in number of IPOs in Q1 2023.



India is expected to be home to 250 unicorns by 2025, second only to the US.

Points to consider: A hastily issued, pre-emptive law could result in over-regulation and amplify the fallout of risks currently faced by Indian digital firms. Indian market conditions, and the opportunities available to digital firms, are vastly different from those prevalent in other jurisdictions. Therefore, the Government should carefully weigh the trade-offs associated with issuing pre-emptive competition rules for digital firms.

Size-Based Arbitrary regimes can hurt interests of consumers and markets: Enforcing pre-emptive prohibitions on practices based on the size of a digital business would result in startups facing regulatory costs and compliance requirements once they reach a certain size. This can create a limit to the extent of growth a start-up can achieve without facing regulatory costs. This in turn can lead to a cascading impact on their ability to raise capital, investor sentiments and ultimately consumer welfare. **The diagram below explains the manner in which ex-ante landscapes can impact these key stakeholders.**



As the figure above demonstrates, a size-based regime, would effectively incentivize start-ups to stay small in order to avoid regulation. This notional “growth ceiling” limits the return on investments made by investors, thereby discouraging them from investing in Indian digital startups. Together, this could cascade into a vicious cycle, resulting in a dearth of funding for start-ups, a lack of growth in the start-up segment, and ultimately limiting innovation and consumer choice in Indian digital markets.

Points to consider: A size-based approach could harm start-ups as they progress on their growth journey, impact investor sentiment, and ultimately reduce choices and increase prices for customers. Not only do these outcomes risk impeding the Government’s overarching policy goals, they run contrary to the objectives of competition law. Moving from the MRTP Act (which tried to prevent ‘bigness’) to the Competition Act (which tries to prevent harms to competition and consumers) was a conscious decision for Indian lawmakers. We risk reversing the progressive approach of the Competition Act with current proposals for pre-emptive intervention in digital markets.

KEY TAKEAWAYS

- ➔ The Indian economy faces unique risks and opportunities which apply equally to its digital firms. Hasty introduction of additional competition rules could increase risks, and force undesired trade-offs for Indian digital firms.
- ➔ Size-based laws tend to impact firm-size, investor sentiments and consumer welfare – thereby defeating the central objectives of competition law and policy.
- ➔ India should prioritize its unique development and policy goals through evidence based regulatory frameworks, instead of adopting experimental solutions from other jurisdictions.

