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EVENT REPORT

2nd Annual International Conference

COMPETITION LAW IN THE DIGITAL AGE

CONTEXTUALISING GLOBAL EXPERIENCES



Event Report

2nd Annual International Conference Competition Law in the Digital Age: Contextualising Global Experiences

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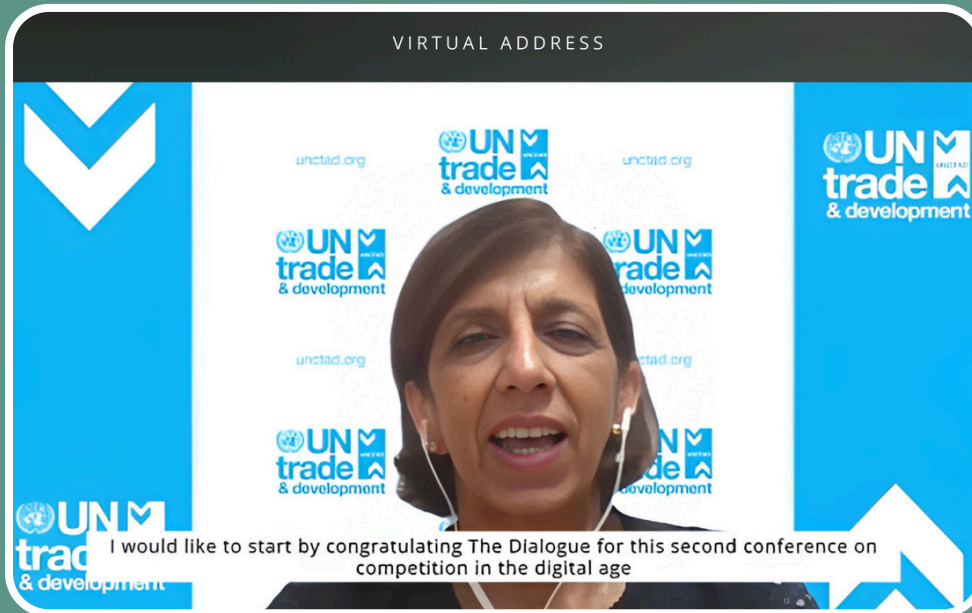
EXECUTIVE SUMMARY

The Dialogue organised its 2nd Annual International Conference on ‘Competition Law in the Digital Age: Contextualising Global Experiences’ on 8 August 2024 to examine the role of digital markets in national and global economies and the approach of competition law and policy towards them. The international conference brought together experts from India, the United States, Japan, South Korea, South Africa, Brazil, and the European Union (EU).

The event featured a wide range of stakeholders, including civil society representatives, government officials, technology companies, industry bodies, international organisations, academicians, small and medium businesses, and legal professionals. Below are the key takeaways from the discussions.

Key Takeaways:

- i. Technologies are advancing rapidly, and several countries are taking different approaches to regulating competition in technology markets. These approaches encompass proposing ex-ante frameworks, strengthening existing frameworks, self-regulation, and co-regulation.
- ii. Regulating large digital platforms while simultaneously supporting innovation can be challenging. The economic implications of digital competition laws should be analysed sufficiently to ensure that policies support economic growth and innovation while keeping anti-competitive conduct in check.
- iii. Globally, regulators & governments exchange ideas through various mechanisms, including multi-lateral fora & cooperation mechanisms such as formal and informal cooperation. While structured formal cooperation has proved important, informal networks also play a crucial role in facilitating discussions, such as sharing their insights & perspectives on practices amongst diverse jurisdictions. Often, the work of informal networks ends up with a potential bias towards the resource-rich countries.
- iv. Consumer welfare plays a crucial role in developing competition policies, irrespective of the jurisdiction. The underlying goal of digital competition laws is to enhance consumer benefits, which is also reflected in the EU’s Digital Markets Act (DMA).
- v. Different countries have developed their own laws and policy approaches. For instance, the EU has developed the DMA. However, even though the DMA is one of the earliest experiences, it is necessary to tackle its issues, such as increased compliance costs for small businesses. Countries should prioritise their domestic realities & focus on the needs of their domestic markets rather than disproportionately relying on the frameworks of other jurisdictions.
- vi. There is a need for a shift in policy approaches. Unlike traditional models, policies in the digital realm require continuous evaluation and adjustments. It is important to involve various stakeholders, such as industry experts, policymakers, and consumer welfare groups, to ensure that the regulations are comprehensive and well-rounded.
- vii. Micro, Small, and Medium Enterprises (MSMEs) and startups gain several advantages from digital services, including increased visibility, a more extensive consumer base, and increased consumer interaction. Therefore, any new policy should be cognisant of the impact on MSMEs and startups.
- viii. Regulatory decisions should be grounded in empirical evidence. Empirical evidence and cost-benefit assessments are necessary to avoid unintended consequences and ensure that regulations support rather than impede market dynamics and innovation. Furthermore, the need for a thorough understanding of the specific issues regulations aim to address was underlined.



Virtual Address by **Ms. Teresa Moreira**, Head of the Competition and Consumer Policies Branch, UNCTAD - Recorded message



Closing Address by **Mr. S. Niranjan Reddy**, Hon'ble Member of Parliament (Rajya Sabha) - In-person

Panel 1: Global Dynamics of Competition Policy and Digital Markets



Dr. Mariana Tavares, Dr. Akira Inoue, Mr. Lazar Radic, Ms. Hemangini Dadwal and Dr. Aditya Bhattacharjea and Mr. Rahul Rai (Moderator)

Panel 2: Governance Forum: How Can Domestic Experiences Shape Competition Frameworks for New-Age Markets?



Dr. Amar Patnaik, Dr. Hariprasad Govinda, Dr. Reiko Aoki, Dr. Victor Fernandes, Mr. Kazim Rizvi (Moderator), Ms. Akari Yamamoto, Ms. Payal Malik, and Ms. Rama Vedashree

Panel 3: Regulation of Competition in Digital Markets: What Should Small Businesses and Consumers Expect?



Dr. Andrew Chongseh Kim, Dr. Kinshuk Jerath, Dr. William A. Reinsch, Ms. Gowree Gokhale, Mr. Rajat Garg and Dr. Viswanath Pingali (Moderator)

1 INTRODUCTION

Countries in both the Global North and South are increasingly discussing the role of technology markets in their jurisdictions and how competition laws and policies regulate them. Academics, international organisations, regulators, policy practitioners, lawyers, and stakeholders from industry and civil society actively contribute to this ongoing discourse.

The conference offered a platform for stakeholders to share insights from various jurisdictions and propose recommendations for competition law and policy in digital markets. Ms Teresa Moreira, Head of the Competition and Consumer Policies Branch at the United Nations Conference on Trade and Development (UNCTAD), delivered a virtual address, while Mr Niranjana Reddy, Hon'ble Member of Parliament, delivered the closing address.

The conference featured the following sessions:

- i Panel 1: Global Dynamics of Competition Policy and Digital Markets
- ii Address by UNCTAD
- iii Panel 2: Governance Forum: How can domestic experiences shape competition frameworks for new-age markets?
- iv Panel 3: Regulation of Competition in Digital Markets: What should small businesses and consumers expect?
- v Closing Address

2 PANEL 1: GLOBAL DYNAMICS OF COMPETITION POLICY AND DIGITAL MARKETS

2.1. PANEL SPEAKERS

Moderator: Mr. Rahul Rai, Partner, Axiom5 (In-person)

Speakers:

- a. Dr Mariana Tavares, Partner at Cruz Vilace Advogados and International Consultant to the UN on Competition Policy (Online)
- b. Dr. Akira Inoue, Partner, Baker & McKenzie, Japan (Online)
- c. Mr. Lazar Radic, Senior Scholar for Competition Policy at ICLE, Adjunct Professor of Law at IE Law School, PhD (Online)
- d. Ms. Hemangini Dadwal, Partner, AZB & Partners (In-person)
- e. Dr. Aditya Bhattacharjea, Professor of Economics (Retd.), Delhi School of Economics and Honorary Visiting Senior Fellow, The Dialogue (In-person)

2.2. KEY FINDINGS

2.2.1. Focus on Consumer Welfare

The panel extensively discussed the role of consumer welfare as a key principle in competition policy across various jurisdictions. Despite differences in regulatory frameworks, countries generally agree on the importance of prioritising consumer welfare. The discussion emphasised that while frameworks like the EU's DMA aim to ensure fairness for business users and curb anti-competitive practices, the primary goal remains to enhance consumer benefits.

The panel acknowledged that, although the implementation of these principles varies, the core objective of protecting and promoting consumer welfare is universally recognised and remains a central principle in shaping competition policies.

2.2.2. Formal vs. Informal International Cooperation

The discussion centred around the differences between formal and informal cooperation in competition policy. Formal cooperation typically involves international organisations with established structures, such as the United Nations (UN), which operate through structured processes and frameworks. In contrast, informal cooperation, represented by groups like the International Competition Network (ICN), often sees greater participation and influence from competition authorities of the developed world.

This disparity can affect how well various nations are represented in the outcomes of such forums. The panel stressed that while formal cooperation provides a structured approach, informal networks play a crucial role in facilitating discussions and sharing practices among a diverse range of jurisdictions, albeit with a potential bias towards the interests of more resource-rich countries.

2.2.3. Second-Mover Advantage

The panel explored the concept of "second-mover advantage" in the context of India's regulatory strategy. By observing regulatory developments and outcomes in the EU and the UK, India can benefit from the experiences of early adopters. This approach allows India to assess the successes and shortcomings of existing frameworks before finalising its own regulations.

The panel emphasised that this strategy enables India to design more contextually relevant and effective rules by leveraging insights from other jurisdictions. However, they also stressed that India and other Global South countries must prioritise their own domestic experiences and realities when shaping competition laws for technology markets.

2.2.4. Need for Empirical Evidence

The discussion emphasised the importance of basing regulatory decisions on empirical evidence. Several panellists raised concerns about adopting regulations without sufficient data and testing. They highlighted that while the EU's DMA offers a reference, it is still evolving and may not be a reliable foundation for India's regulatory approach.

The panel noted that untested regulations could hinder innovation. Experts highlighted the need for a clear understanding of the specific issues regulations aim to address, calling for empirical evidence and cost-benefit assessments. This approach ensures that regulations support, rather than impede, market dynamics and innovation while avoiding unintended consequences.

2.2.5. Increased Compliance Burden

The panel discussed the potential increase in compliance costs associated with new regulations. For instance, the EU's Digital Services Act (DSA) is projected to impose significant compliance costs on businesses. The panel cautioned that adopting similar approaches in India and the Global South could disproportionately impact startups and small businesses, limiting their ability to innovate and fully leverage the digital ecosystem. There was a strong emphasis on avoiding a one-size-fits-all regulatory approach. The panel stressed the importance of designing regulations that accommodate the diverse needs of businesses while fostering an environment conducive to innovation and competition.

3 VIRTUAL ADDRESS

The address began by highlighting concerns about the existing digital divide, emphasising that digital markets have not yet reached vulnerable groups such as the elderly, immigrants, and those in remote areas. The growing digital divide between developed and developing countries was also highlighted, underscoring the need for competition policies to foster more inclusive digital markets.

Further, given the ongoing discussions on the digital markets, it was highlighted that there have been different approaches towards the global competition law & policy in the digital markets. Different economies have started with their own approach, which includes strengthening the existing competition regime, using

technology to understand how digital markets operate, enhancing communication between businesses and competition authorities, and introducing complementary regulations to existing competition laws such as the ex-ante regulation.

Additionally, the need for increased collaboration between competition authorities and regulators in areas such as data protection, consumer protection, telecom, and financial services was emphasised. The discussion concluded with a call for greater international cooperation—whether formal or informal—as nations can benefit from the experiences of other jurisdictions in shaping their digital competition frameworks.

4 PANEL 2: GOVERNANCE FORUM: HOW CAN DOMESTIC EXPERIENCES SHAPE COMPETITION FRAMEWORKS FOR NEW-AGE MARKETS?

4.1. PANEL SPEAKERS

Moderator: Mr. Kazim Rizvi, Founding Director, The Dialogue (In-person)

Speakers:

- a. Ms Rama Vedashree, Former CEO, Data Security Council of India (In-person)
- b. Ms. Payal Malik, Visiting Professor, Digital Economy Startups and Innovation (DESI) and IPCIDE, Indian Council for Research on International Economic Relations (ICRIER) (In-person)
- c. Dr Amar Patnaik, Former Member of Parliament (Rajya Sabha) (In-person)
- d. Dr. Hariprasad Govinda, Principal Economist at CCSA (Online)
- e. Dr. Victor Fernandes, Commissioner, Conselho Administrativo de Defesa Econômica (CADE) (Online)
- f. Dr. Reiko Aoki, Commissioner, Japan Fair Trade Commission (Online)
- g. Ms. Akari Yamamoto, Legal Officer, Competition and Consumer Policies Branch, UNCTAD (Online)

4.2. KEY FINDINGS

4.2.1 Genesis and Importance of Digital Competition Law

The panel acknowledged that traditional competition laws, crafted initially to address anti-competitive practices in conventional markets, often fall short in handling the complexities of digital markets. The rapid evolution of digital markets has created the need for new-age competition laws that address contemporary issues. Therefore, there is a need to craft these laws to anticipate future ones, ensuring that regulation remains relevant and effective in a dynamic market environment.

4.2.2 Role of Empirical Evidence in Legislation & Impact on Stakeholders

The panel emphasised the importance of using empirical evidence as a vital tool in developing effective digital competition laws. A data-driven approach enables policymakers to understand better the real impact of digital platforms on market dynamics, competition, and consumer behaviour. By relying on concrete data, laws can be more precisely tailored to address the unique challenges the digital economy poses.

The discussion also highlighted the implications for startups and SMEs. While robust competition laws can shield smaller players from anti-competitive practices by larger firms, overly stringent regulations risk creating barriers to entry. Therefore, striking a balance and avoiding such unintended consequences is crucial.

4.2.3 Focus on Consumer Protection and Public Interest

The integration of socio-economic priorities into competition law emerged as a crucial theme. The panel emphasised that competition laws should not only promote a competitive market but also protect consumers by ensuring that digital platforms uphold transparency and maintain fair pricing practices.

Additionally, the broader public interest - including the digital divide and accessibility - should be taken into account to ensure that competition laws contribute to social equity. Therefore, while protecting consumers from exploitation is essential, regulations should be crafted to not unduly burden businesses, allowing for both consumer rights and market growth to coexist.

4.2.4 Challenges of Regulating Digital Platforms

A significant challenge discussed was the regulation of large digital platforms while simultaneously fostering innovation. The panel recognised the need to address anti-competitive practices within the digital economy. However, they also highlighted the importance of supporting the growth of smaller businesses that rely on these platforms for their operations.

Therefore, striking the right balance between regulation and promoting a competitive environment presents a considerable challenge. The panel emphasised the necessity for nuanced regulations that prevent the abuse of market power while encouraging innovation and ensuring that emerging businesses can thrive. The discussion underscored the economic implications of digital competition laws, asserting that policies should promote economic growth and innovation while effectively keeping market power in check.

5 PANEL 3: REGULATION OF COMPETITION IN DIGITAL MARKETS: WHAT SHOULD SMALL BUSINESSES AND CONSUMERS EXPECT?

5.1. PANEL SPEAKERS

Moderator: Dr. Viswanath Pingali, Professor, IIM Ahmedabad and Senior Fellow – Economics, The Dialogue (In-person)

Speakers:

- a. Dr. Kinshuk Jerath, Arthur F. Burns Professor of Free and Competitive Enterprise; Chair of the Marketing Division, Columbia Business School (In-person)
- b. Dr. William A. Reinsch, Scholl Chair and Senior Adviser, Center for Strategic and International Studies (Online)
- c. Andrew Chongseh Kim, Senior Foreign Attorney, Bae, Kim & Lee LLC (Online)
- d. Ms. Gowree Gokhale, Counsel, Nishith Desai Associates (In-person)
- e. Mr Rajat Garg, Co-Founder and COO, myUpchar (In-person)

5.2. KEY FINDINGS

5.2.1. Impact on SMEs

The transformative impact of digitalisation on MSMEs was a key focus of the discussion. Panellists noted that the shift to the online realm has provided several advantages for MSMEs. Digital services have significantly enhanced the visibility of these enterprises, enabling them to reach a broader consumer base that would have been challenging to access through traditional means. Additionally, digitisation has lowered barriers to market entry, allowing MSMEs to invest more in innovation and expand their market reach. The panel also observed that digital tools had facilitated international trade,

enabling MSMEs to enter new markets and introduce their innovative products and services globally.

The panel highlighted that many MSMEs - approximately 65% - utilise digital technology for their operations. This digital engagement underscores the importance of ensuring competition laws for technology markets support, rather than hinder, their growth in the digital economy. One panellist emphasised the high compliance costs associated with competition laws, such as those imposed by the DMA, noting that these costs can be particularly burdensome for SMEs. Such financial pressures can strain SMEs, which often lack the resources to manage complex regulatory requirements.

The panel discussed the necessity for regulations that consider smaller businesses' financial and operational constraints to ensure compliance does not disproportionately impact their ability to compete effectively. Furthermore, it was noted that ex-ante restrictions are most effective when the external environment is stable and internal innovation is not undergoing rapid changes; otherwise, they risk stifling innovation and producing unintended consequences. Given the significant innovation occurring in countries like India and Korea, such regulation may inadvertently suppress innovation.

5.2.2 Policy Approach

Stakeholders emphasised the need for more inclusive consultation processes involving MSMEs and startups while drafting the bill. They argued that the voices of smaller enterprises should be prioritised to ensure that the legislation effectively supports their growth and addresses their specific needs. The discussion highlighted the importance of gathering empirical evidence from SMEs to inform policy decisions.

Real-world experiences, such as payment delays faced by SMEs, should guide amendments to existing laws and the development of new regulations. The need for a collaborative approach among various government agencies was also stressed. Engaging multiple stakeholders - including SMEs, academics, and industry representatives - in discussions and task forces can lead to more informed and effective policymaking in the digital economy.

The conversation highlighted the importance of incorporating insights from behavioural economics into competition laws for technology markets. Recognising that consumer behaviour and preferences vary significantly across jurisdictions can lead to more effective and relevant regulations. It was highlighted that South Korea has twice pursued ex-ante regulations similar to DMA and failed twice due to the

concerns highlighted by different stakeholders, including industry, SMEs, academics, and homegrown platforms. It was highlighted that as the law sought to regulate platforms with significant market presence, homegrown platforms were also concerned about the growth prospect due to additional regulation. Therefore, South Korea has shifted towards a self-regulation approach for the industry. This led to global platforms & homegrown platforms joining hands to address the concerns of consumers and small businesses. Drawing from international experiences, particularly South Korea's shift towards self-regulation, the conversation suggested that India might benefit from allowing industry stakeholders to develop self-regulatory frameworks. This approach could foster innovation while addressing competition concerns without imposing rigid ex-ante regulations.

6 CLOSING ADDRESS

The closing address provided profound insights into the evolving nature of lawmaking, especially regarding digital markets and the broader digital economy. It emphasised the need to shift from traditional, static approaches to a more dynamic, iterative model of lawmaking. The address acknowledged that the rapid pace of technological advancement in the digital age renders conventional legislative methods inadequate. Once established, static laws often struggle to keep pace with rapid developments in technology and market practices. It was suggested that the digital realm necessitates continuous evaluation and adjustment, unlike the traditional model, where laws are created and seldom revisited.

Laws should initially be set on fundamental principles but be flexible enough to adapt to new circumstances as they arise. This model allows for the ongoing calibration of regulations, ensuring they remain relevant and effective as the digital landscape evolves. This becomes significant given that the practical application of laws can often reveal unforeseen

consequences or highlight areas where regulation may be too stringent or lenient. The address further emphasised the need for comprehensive discussions and deliberations when formulating regulatory frameworks. It highlighted the importance of involving various stakeholders - including industry experts, policymakers, and consumer groups - to ensure that regulations are well-rounded and consider multiple perspectives.



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