

Standing Committee Report Summary

Anti-Competitive Practices by Big Tech Companies

- The Standing Committee on Finance (Chair: Mr. Jayant Sinha) submitted its report on ‘Anti-Competitive Practices by Big Tech Companies’ on December 22, 2022. Key observations and recommendations of the Committee include:
 - **Regulating digital markets:** Digital markets comprise of internet based (digital) companies with millions of interacting participants. The Committee noted that, unlike physical markets, digital markets have increasing returns to size (returns of business increasing with size of the firm) driven by learning and network effects (utility of users growing with number of users on the platform). As a result, such markets may be dominated with a few leading players emerging in a short period. This happens even before policies can be formulated and anti-competitive practices are adjudicated. The Committee recommended that competitive behaviour needs to be evaluated before markets end up monopolised instead of the ex-post evaluation done presently.
 - **Digital Gatekeepers:** The Committee recommended that India must identify the leading players in digital markets that can negatively influence competitive conduct. They should be categorised as Systemically Important Digital Intermediaries (SIDIs) based on their revenue, market capitalisation, and the number of active businesses and end users. SIDIs should annually submit a report to the Competition Commission of India (CCI) detailing the measures taken to comply with various mandatory obligations.
 - **Digital Competition Act:** The Committee observed that India needs to enhance its competition law to address the needs of the digital market. Economic drivers of this market facilitate a few players in dominating the ecosystem. The Committee recommended that the government should introduce a Digital Competition Act to ensure a fair, transparent, and contestable digital ecosystem.
 - **Self-preferencing:** An entity may have the dual role of providing the platform and competing on the same platform. Self-preferencing is a practice wherein a platform favours its own services or the services of its subsidiaries. The Committee noted that a lack of platform neutrality can lead to a negative effect on downstream markets. It recommended that SIDIs must not favour their own services over those of their competitors when mediating access.
 - **Data Usage:** The Committee noted that market leaders who have access to the personal data of users tend to
 - get bigger while new entrants struggle to acquire users and user data. It recommended that SIDIs should not process the personal data of end users who use services of third parties, if such parties use the core services of the SIDI. They should also not combine personal data from the relevant core service of the platform with personal data from any other core services of the platform. Personal data from the relevant core service of the SIDI should not be cross-utilised in other services provided separately by the platform. End users should not be signed into other services of the platform unless he has been presented with a specific choice to which he has consented.
- **Revamping CCI:** The CCI regulates market competition in India. The Committee opined that CCI should be strengthened to address anti-competitive behaviour in digital markets. It suggested the creation of a specialised digital markets unit in CCI. This unit would: (i) monitor established and emerging SIDIs, (ii) give recommendations to the central government on designating SIDIs, and (iii) adjudicate on cases related to digital markets.
- **Third-party applications:** The Committee noted that gatekeeper entities have been found to restrict the installation or operation of third-party applications. It observed that SIDIs should allow and technically enable the installation and use of third-party software applications. Such software applications or software application stores should be accessible by means other than the relevant core services of the platform. However, data should not be transferred to the government of a foreign adversary from SIDIs.
- **Bundling and tying:** Many digital firms force consumers to buy related services. The Committee noted that this creates asymmetry in pricing and leads to the removal of competition from the market. It also enables leading players to leverage their market power in one core platform to another. It opined that SIDIs should not force businesses or end users to subscribe to any further services for being able to use their core platform service.
- **Anti-steering:** Anti-steering provisions are clauses wherein a platform prevents its business users from steering its customers to offers other than those provided by the platform. The Committee recommended that SIDIs should not make access to their platform conditional on the purchase/use of other products or services that are not part of or intrinsic to the platform.

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