Competition Commission of India
Journal on Competition Law and Policy
Doi: 10.54425/ccijoclp.v3.116
Vol. 3, December 2022, pp. 173-194

Report
Workshop on Startup Ecosystem and Competition

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India is currently at the cusp of large-scale digitisation, with the emergence of startups across various sectors. Most startups are technology-driven businesses and typically rooted in innovation, and they try to address deficiencies of existing products and services, or create new categories of goods and services. Startups thereby often disrupt established ways of doing business and have widespread impact on the sectors that they are part of. The fillip to this ecosystem has been provided by the Government of India's Startup India initiative, launched in January 2016 with the objective of building a strong ecosystem for nurturing innovation and startups in the country.

Against this background, the Competition Commission of India (CCI) organised a workshop on Startup Ecosystem and Competition on 4 February 2022, with the International Institute of Information Technology (IIIT) Bangalore as the knowledge partner of the workshop. The workshop was part of the Commission's endeavour to use market studies and stakeholder consultations in diverse sectors, particularly in emerging sectors or those facing technological disruption, to understand new parameters of competition.

The workshop brought together relevant stakeholders to discuss the regulatory architecture essential for developing a sustainable startup ecosystem. As the startup ecosystem in India evolves and matures, the startup interface with big tech is set to become more important. Internationalisation of research and development (R&D) has resulted in digital companies becoming eager to build on India's initial advantage in software development and engage in both technology-deepening and technology-widening activities. There is potential for immense value

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creation resulting from the complementarities between the strengths of big technology companies operating these platforms and startups.

The workshop comprised an inaugural session and two technical sessions themed "**Big Tech and Startups: Synergies and Challenges**" and "**Mergers and Acquisitions**".

A summary of the deliberations at the workshop is presented below.

1. Inaugural Session

Ashok Kumar Gupta, Chairman, Competition Commission of India, opened the workshop with a welcome address. Mr. Gupta highlighted the evolution of Indian startups in various sectors of the economy and the need for their coexistence with multinational big tech firms. At the same time, he cautioned that, while network effects and associated economies have created large digital platforms in defined markets both globally as well as in India, the gateway position of platform firms may provide them with unproportioned control over consumer data. Further, the entire multi-stakeholder ecosystem of sellers, consumers, advertisers, and application developers depends on them for survival and growth. He also pointed out that the common thresholds and metrics used for assessing anti-competitive effects in traditional markets may not be appropriate when applied to digital platforms. He emphasised the need for more data collection and analysis for evidence-based regulation, especially in the context of evolving digital markets. He stressed that the startup ecosystem in India is flourishing, and hence, the regulation needs to be balanced with nurturing innovation and simultaneously proactively engaging in curbing anti-competitive behaviour and consumer harm.

In his talk, **Nandan M. Nilekani**, Chairman and Co-Founder, Infosys, and Founding Chairman, UIDAI, mentioned that India's growing IT services sector has nurtured a massive technical talent pool, which is partly responsible for the growth of tech startups in the country. He highlighted the following three paradigm shifts taking place in India:

- The massive digital transformation across private, public, and government sectors, fuelled by the COVID-19 pandemic;
- The adoption of digital public goods in India at a population scale, initiated by the digital ID Aadhaar, the introduction of the

indigenous Unified Payment Interface (UPI) developed by the National Payments Corporation of India (NPCI), e-Know Your Customer (e-KYC) for digital authentication, and, more recently, the account aggregator framework and Open Network for Digital Commerce (ONDC), which provide interoperability and inter networking through open interfaces; and

- The rise of the Indian startup ecosystem, which is third only to the US and China in terms of valuation, revenue, and employment-generation across industry verticals.

He also stressed that, apart from the legal and policy framework for the appropriate governance of the massive digital ecosystem, a technology framework to facilitate competition, interoperability, and interchange of data and associated artefacts is necessary to build a sustainable digital future.

2. Technical Session I: Big Tech and Startups: Synergies and Challenges

Technical session I, themed **"Big Tech and Startups: Synergies and Challenges"**, was moderated by **Arghya Sengupta,** Founder and Research Director, Vidhi Centre for Legal Policy. The panellists included **V. Sridhar,** IIIT Bangalore; **Lalitesh Katragadda**, Founder, Indhihood; **Sujith Nair,** CEO and Co-Founder, Beckn Foundation; **Sameer Nigam,** Founder and Chief Executive Officer, PhonePe; **Praveena Rai,** Chief Operating Officer, NPCI; **Anirudh Burman**, Fellow and Associate Research Director, Carnegie Endowment for International Peace India; **Govind Shivkumar,** Director, Responsible Technology, Omidyar Network; **Suniel Maggo,** President, Chamber of Startups, Industries and Entrepreneurs (CSIE India) Council; and **Parminder Jeet Singh,** Executive Director and Senior Fellow, IT For Change.

The session theme focused on competition concerns faced by start-ups. Visibility and access to the market is a critical prerequisite for the survival and growth of startups. Mostly, startups depend on digital platforms such as app stores, search engines, social media platforms, and advertising platforms for conspicuousness and entry. Digital platforms act as the first touchpoint for a consumer's transaction journey, and it is through the

ranking logic of search results and advertisements that an online firm/ seller's visibility is determined.

The platforms determine the rules according to which users, including consumers, business users, and providers of complementary services, interact on their platform. Evans (2020)[3] explains that such governance systems are designed by platforms to take care of negative externalities such as fraud, bullying, and hate speech, which may arise because of interactions between different users of the platform. The existence of negative externalities can reduce the value of the platforms for users and may thus have a detrimental effect on the profits of the digital platform. Platforms perform the role of a referee to deter these offences and enforce rules that may range from levying penalties on the offending user to temporary banning or permanently excluding the user from the platform.

Playing the role of a referee may also create incentives for the digital platform to engage in anti-competitive conduct. Digital platforms can make use of their governance system to exclude startups from their platforms (Evans, 2020).

Arghya Sengupta initiated the session by noting that the current growth of the startup sector in India is remarkable. He further added that India is ranked 20th in the world in terms of ease of startups to carry out their business. Apart from that, there are well-established global as well as local internet firms with substantial market power.

Taking the session forward, **V. Sridhar** stated that India is home to 83 unicorns, which are estimated to be worth USD 277 billion, and during the period from April to November 2021 alone, a total funding of INR 89,666 crores was raised. He highlighted that most of these start-ups are internet-based platforms in sectors such as fintech, edtech, food tech, and healthcare. The platform business model is built on network effects that enable the "winner-take-all" scenario. Thus, the larger the platform, the greater the economies of scale and scope, and the better the unit economics, thereby providing market advantage to such larger incumbents. Emphasising the chairperson's viewpoints from the previous session he elaborated

[3]Evans, D. S. (2020). Vertical restraints in a digital world. In D. S. Evans, A. Fels, & C. Tucker (Eds.), *The Evolution of Antitrust in the Digital Era: Essays on Competition Policy*. Competition Policy International. https://ssrn.com/abstract=3551597

that the second most important factor for platform businesses is the collection of customer information to provide personalised services. The use of customer data for personalised services can lead to extreme price discrimination which might, in the economic sense, wipe out some of the consumer surplus. Further, customer data that is useful for platforms can also be harmful, invading their privacy in the long run.

Next, he discussed the issue of digital intermediation provided by platforms, which helps customers as well as producers discover markets that are not easily visible. It reduces transaction costs and hence, provides a lot of value addition for stakeholders. Unfortunately, all these platforms tend to be consolidated, partially due to the horizontal and vertical alliances and integrations that take place in markets. He also shared his viewpoints regarding the possible ways in which the startup ecosystem in India can be leveraged. First, he talked about interoperability and interconnectedness amongst all platforms to share business data and incorporate Application Programming Interface (API) technologies, such as that implemented in UPI. Towards this, he suggested technological, economic, and legal dimensions that will allow these platforms to be interoperable. Second, he discussed protecting stakeholders' interests, whether through co-regulation or light-touch regulation. Third, he pointed out market enablers such as ease of doing business and making the startup ecosystem investment-friendly. Finally, he talked about policy directives that provide a level playing field between large and small firms, allowing them to coexist.

Next, **Arghya Sengupta** requested the panellists to brainstorm on what India needs to do to promote startups in general, particularly in relation to big tech. To this, **Lalitesh Katragadda** responded that all firms—big tech and startup—have an obligation to meet shareholders' expectations. Technologies such as BARN (Bio, Astro, Robotics, and Nano) can define the future, but India needs to catch up on these fronts. He stated that India is a growing economy, and the large consumer base in the country provides enough opportunities to achieve this organically. However, India, especially Indian startups, will face competition along the way. He stressed the following possible ways to bring Indian startups on par with international competitors:

- Ease of doing business: According to him, we need to make flexible and smart regulations instead of depending on our multiplicity of regulatory legacy.
- He stated that steps should be taken to liberate the data from a few companies into the hands of users, and that firms, including Indian startups, should have equal access to the data in order to innovate services, thereby competing effectively.
- Social burden: In India, as in other developing countries, a 100 million produces goods and services for a population of 1.3 billion, creating a steep hurdle towards prosperity. The government needs to fix this issue structurally in order to prevent an exodus of capital and firms from India. He also stated that this social burden borne by Indian firms should have to be compensated through reduced taxation and improvement in the country's business climate.

Subsequently, **Sujit Nair** stated that, even though the internet is built on the constitutional principles of interoperability and openness, the rapid pace of innovation over the internet has largely ignored these principles. According to him, policy nudges, including appropriately designed incentives, are required to move the digital ecosystem towards an open and interoperable world.

Sameer Nigam shared that PhonePe is one of the first unicorns to come out of the India Stack vision of interoperable systems. PhonePe bet on UPI very early and completely, when everyone else was working on digital wallets. He listed the following two reasons for the same:

- The belief in building a product (i.e., UPI), with all stakeholders, including banks, financial institutions, the government, and the regulator coming together to make it a reality. With India Stack, the product architecture was incredibly well-designed.
- Betting on an interoperable open payment system when all the others were building closed wallets, with funds spent on branding and marketing.

PhonePe received the account aggregator (AA) licence. However, AA and ONDC are very different from UPI, in the same way that UPI is very different from Aadhaar. With Aadhar, the government was not only the change agent but also the platform—the sole supply and distribution

point. Because of sole ownership of the government, it could be offered as an end-to-end public good. On the other hand, UPI, with more than 100 banks as issuers, needed a network play to reach consumers. Hence, UPI became the first public platform that was interoperable and provided supply-side infrastructure. AAs are different and aim to satisfy the requirements of fintech firms and existing incumbents in the financial services industry who want access to credit data. In this case, the demand side exists, and hence, there is a need to create supply-side infrastructure.

Further, unlike NPCI, which forms a single broking layer for UPI, AA has multiple players trying to be the broking layer for the same interoperable standard. This is a complex problem to solve compared to centralised negotiation. Thus, AA has a very different dynamic as well as interoperable network compared to UPI. ONDC's interoperable standards will set the stage for many startups in the e-commerce space to try it alongside big tech companies. Without a public utility broking layer and without the government taking ownership, ONDC will have to evolve. However, conceptually, it is a model aimed at democratising, and therefore, providing access to everyone on the supply and the demand sides. Finally, he concluded by stating the following:

- There is a significant first-mover advantage for new platform players in the country. Indian startups in the platform markets are backed by global venture capitalists, as they believe in local actors and new entrepreneurs. The animal instincts and passion of these entrepreneurs will give them an edge compared to incoming global players.
- Second, we need to have the right regulatory regime that can foster innovation. While there is bitter debate about the level playing field between telcos and over-the-top (OTT) firms, technology is what has made it possible for WhatsApp to be what it is today. The free innovative culture of the US is mainly responsible for tech innovation. The same holds true in crypto, where we are losing the game due to uncertain regulation.
- Third, we need to acquire capital for startups from within or outside the country without getting mired in geopolitical contours.

Praveena Rai averred that the success of UPI is mainly due to meeting customer needs for digital payments. From the regulatory perspective, it involves considering providing customer choice, providing customer enablement, and taking care of customer interest.

Interoperability is a vital attribute in providing customer choice. It opens up opportunities for consumers; creates a level playing field between incumbents and new entrants in the market; and does not allow "walled gardens". She mentioned that, though Chinese fintech firms had an earlier start, they grew due to the "closed loop systems" they built. However, in India, thanks to UPI's interoperability, there are several digital fintech payment firms in the market providing a wide array of choices to consumers. As a two-sided platform, with issuers and banks on one side and the beneficiary bank on the other side, UPI, through its open architecture, has enabled others such as fintech firms to play their role in the payment ecosystem. Developments in areas such as e-KYC, video-enabled KYC, and Aadhar-enabled payment system have revolved around making processes easier and flexible for customers. Regulatory enablement such as the online dispute resolution framework of RBI have expedited dispute and grievance resolution of customers. RBI's regulatory sandbox, open APIs in UPI, and the open interoperable framework have made space for business experimentation by startups in the fintech space. She concluded that a stable regulatory vision and roadmap for bringing capital and innovation together is necessary to create a successful business out of India.

Anirudh Burman pointed out that interoperability of systems facilitates competition and reduces network effects typically associated with large incumbents. He discussed the application of interoperability through the open banking initiative in the UK and suggested that, when there is greater data sharing, there are opportunities for new firms and startups to create newer services that are not being provided by the incumbents. However, he questioned the use of interoperability to solve the issue of market concentration. He further stressed on identifying sectors or services that would be more amenable for interoperability.

Parminder Jeet Singh was of the opinion that platform firms collect and own data about their customers to provide them with personalised services. Over a period of time, they own a large amount of data, thereby

exhibiting huge power asymmetry between them and startups. These big tech firms define the rules of the game, and startups have no option but to play within these set rules. According to him, there will be three-way regulation of the platform economy: traditional competition regulation which has to be modified in tune with developments in the digital platform space; ex-ante regulation, such as the Digital Markets Act of Europe, which defines what can and cannot be done; and sectoral regulation, as every sector is getting platformised and has distinct characteristics. These three regulatory directions must work together and develop a protocol of interaction to solve the issue of platform power.

Govind Shivkumar spoke about the angel investment ecosystem in India. According to him, the following three reasons are indicative of the growth of angel investment in India:

- Increasing influence in the broader Indian community and the ability of investors to take risks.
- Possibility and awareness of smaller investors to become angels instead of stocking up their capital in non-risk instruments such as fixed deposits.
- Increased affluence, awareness about angel investing, and reasonable exit options.

He further mentioned that angel investing is a very small part of the total capital raised and that it must be taken care of by providing regulatory stability and discovering ways of promoting angel investment funds in India. In addition to this, he stated that there is a need to critically review bottleneck issues such as taxation of angel funds, not letting Indian angel funds set up in other jurisdictions, and not letting Indian companies list outside India. He believed that the objective of the regulation should be to lower barriers of innovation and have a light touch on the digital and largely entrepreneurial ecosystem in the country.

Suniel Maggo believed that, for any startup, ideas are important and that sharing the idea in some form of registry requires the protection of the respective intellectual property. The next important thing for a startup is capital; in order to ensure greater inflow of capital in India, rules and regulations need to be more business-friendly. The third crucial thing is

an appropriate exit route for entrepreneurs that will enable them to take risks.

Arghya Sengupta asked the panellists whether there should be a legal mandate for sharing of data by large platforms so that startups can effectively compete with big tech on the data front. Dr. Sengupta referred to Kris Gopalakrishnan's committee suggestions in the Non-Personal Data (NPD) Governance Framework and the criticism regarding disincentivising the collection of data if there is a mandate to share it. In view of the above question**, Lalitesh Katragadda** responded that there should be mandatory data sharing with rule-based, transparent, and uniform processes for the same enabled by law due to the following reasons:

- If we open up health data with associated privacy controls, startups in the healthcare sector will explode and there will be innovations in products that will reduce the cost of healthcare services.
- It also incentivises big tech firms that sit on a large amount of data to innovate as well keep pace with new entrants.

Reiterating Mr. Katragadda's point, **Sameer Nigam** stated that PhonePe already posts anonymised data of all UPI transactions on its platform as open data on GitHub (PhonePe Pulse: https://github.com/PhonePe/pulse) for researchers, think tanks, and the government for analysis. Moreover, Pulse provides data patterns without disclosing user-level information. However, sector-wise granular-level data is not available in India, and hence, it is difficult for a startup entrepreneur to find the market size. Hence, in his view, sharing anonymised data gathered by internet firms will be useful for new entrants as well as the government.

Regarding the single-broking versus multi-broking model, he is of the view that UPI is a classic example of a single-broking model that has been very successful. Similarly, the account aggregator model can also be successful.

He concluded by pointing out the following:

- An interoperable platform which reduces barriers to entry should not be confused with commoditising data, which is what creates economic value.

- Investors are backing up Indian startups due to the hundreds of millions of users, and hence, user data is certainly one of the critical elements for the success of these startups.

Anirudh Burman further supported the view of data sharing and emphasised giving access or mandating access to legacy data that the firm has not used in two years, since such data may be valuable to someone else if not for the firm itself. He further added that the method of implementation of such sharing mechanisms is vital, asserting that certain questions need to be addressed, such as: What are the types of market mechanisms to be developed to transact these shared data? What are the pricing mechanisms?

Arghya Sengupta stated that, since the data is created from data subjects, to some extent, this data is co-created by the data subjects and the firm. With reference to the NPD Governance Framework's construct of community data, he asked the panellists whether data sharing can be mandated for data that lies with companies and which they have curated to build their social graph and hence, belongs to their intellectual property.

Parminder Jeet Singh responded to this by stating that there are some parallels between networks and data. When firms become large, their network power itself has a genuine commercial advantage. This means that the network shall be considered a social asset and that it should benefit society at large and not belong solely to the corporation that created it.

Sameer Nigam further added that, in a government-funded public network such as UPI, everyone that onboards knows the public contractual conditions. However, private contracts are constructed at the application layer. If the data collected in such public networks is commoditised, consumers may move back to private networks such as MasterCard or Visa. Even while using a public network, commoditisation will have a finite time horizon.

Sujit Nair was of view that, as co-owner of the data, data subjects should be able to take data related to them when they move to different platforms.

Praveena Rai stated that UPI facilitates a digital public good created by NPCI, which is a community set up by banks and other financial institutions. She stated that NPCI operates in a highly consultative

mode, and every decision and rule is jointly taken by this community of stakeholders. Needless to say, there will be differences of opinions and views; however, certain basic principles need to hold good in the decision. In general, these principles are broader in scope, taking into account customer interest, growth of the ecosystem, interest of digitalisation, and so on. She says that the most important construct is that the decision is "for the community and by the community".

She agreed with Sameer Nigam that account aggregators are more demand-driven than supply-driven, as in the case of UPI. It needs to be seen how various parties will come together on common principles on data sharing in the aggregator platform. She then said that we also need to learn quickly from these experiments and ensure that an idea does not linger for too long without scaling up.

She highlighted that data sharing involves linking up various private platforms owned by firms such as Amazon and Flipkart through an interoperability framework. The contractual terms of data sharing need to be very explicit for all the parties to come together and make it work. She ended her speech by saying that data sharing also depends on the data subjects. While the earlier generation respects their privacy, Gen Z is less concerned about sharing their data. It is, therefore, possible that the digital first generation monetises it. Hence, the concept of data sharing has to evolve in the years to come.

The audience questioned the panellists whether we should start thinking about governance structures such as digital data exchange.

To this, **Govind Shivkumar** responded that private data exchanges already exist. However, they have not been successful for the following reasons:

- First, users do not know the value of their data. In most cases, they also do not know what to do with their data.
- Second, a single user's data by itself is not useful unless it is aggregated with that of millions of other users to draw inferences.
- Third are incentives for data sharing. From the individual data subject's point-of-view, there might be incentives for moving to another platform. However, since platforms build their products

and personalise them based only on their consumers' data, they have fewer incentives to share.

The audience further asked if there is a mandate for raw data collected by the company for the purpose of sharing, and if so, does that not run contrary to the consent and purpose limitation provisions in the Personal Data Protection (PDP) Bill, which is likely to become law?

Anirudh Burman responded that the larger context of discussion is raw non-personal data (NPD) rather than personal, anonymised data; the NPD Committee also talked about the mandated sharing of NPD rather than personal data. In that case, there is no conflict with personal data protection. Personal data would create a host of different problems, where we would require the consent of the individual whose data has been mandated to be shared.

Next, the audience asked that, as Indian startups begin to innovate into newer areas of digital economy, would sectoral regulations run the risk of pigeonholing startups into pre-decided, inflexible categories and not allowing shifting from one sector to another because of the wide disparity of sectoral regulations?

Parminder Jeet Singh replied that there are trade-offs in regulation and policymaking. Accordingly, there has to be a meta-digital legal framework within which sectoral digital regulation has to be embedded. For fairness, equity, and economic growth, we need to innovate through a protocol of meta-digital governance.

Due to the already dominant multinational incumbents in the space and the business climate, at the end of the day, it would still be very difficult, if not impossible, to build another WhatsApp in India today. **Dr. Arghya Sengupta** posed a question to the panellists as to what it would take for an Indian company today (taking the example of an instant messaging service) to build a service that can compete with or outperform WhatsApp.

To this, the panellists posited the following solutions:

Lalitesh Katragadda: (a) Creating and providing access to a uniform pool of non-personal data; (b) Capital, both from outside India and within, that does not leave the country; (c) Ease of doing business.

V. Sridhar: Leverage the massive subscriber base in India to create context-specific innovation and associated businesses.

Parminder Jeet Singh: (a) Focused industrial policies on specific sectors to enable capital to flow into that sector; (b) Predictable and unambiguous policies for the business to plan and execute.

Anirudh Burman: (a) Improving regulatory capacity in the digital economy space and data-driven innovation; (b) Having minimalistic and balanced regulatory approach.

Govind Shivkumar: (a) Provide entrepreneurs with the freedom to build good vertical businesses by allowing certainty in capital flows and regulations; (b) Entrepreneurs shall innovate with their strengths and create niche verticals to start with.

Sujit Nair: (a) Building a public interoperable infrastructure to promote entrepreneurship and innovation; (b) Having appropriate regulatory structure so that today's startups do not behave like tomorrow's big tech firms.

Praveena Rai: (a) It matters less whether it is copycat solutions or bottom-up built solutions, as long as they solve the right problems of society; (b) Having a regulatory framework for better transparency.

Sameer Nigam: (a) Providing ways to keep capital within the country and not have it spill outside; (b) Having NPD available at the aggregate level; (c) Having a light-touch regulation, but with stricter enforcement for any violation; (d) Having a society-level view on public platforms built through the government tax exchequer.

3. Technical Session II: Mergers and Acquisitions

The second technical session on **"Mergers and Acquisitions"** was moderated by **Rohin Dharmakumar,** Chief Executive Officer, The Ken. The opening remarks were provided by **Shardul S. Shroff,** Executive Chairman, Shardul Amarchand Mangaldas (SAM). The panellists in the session included **Vijay Shekhar Sharma,** Founder and CEO, Paytm; **Abhiraj Singh Bhal,** Co-Founder, Urban Company; **Akshant Goyal,** Chief Financial Officer, Zomato; **Phalgun Kompalli,** Co-Founder, UpGrad; **Ramana Telidevara,** Founder & CEO, CodeTantra; **Prashant**

Tandon, Co-Founder, CEO, 1mg; **Gautam Chopra,** Co-Founder and CEO, BeatO; **Suniel Maggo,** President, Chamber of Startups, Industries and Entrepreneurs (India) Council; and **Chinnu Senthilkumar,** Managing Partner, Exfinity Ventures.

Rohin Dharmakumar initiated the session by pointing out the difficulty of obtaining optimal competition, especially in the context of mergers and acquisitions. He accentuated the need for regulators, especially in cases of mergers and acquisitions, to guide the outcome in a manner that is closer to optimal for all parties involved. Emphasising the Chairperson's viewpoints on the pros of acquisitions, he stated that startups are using funding to acquire more startups in order to grow bigger and increase market share, which further invites capital, hence causing a positive feedback loop wherein funding enables mergers and acquisitions (M&A), which further invites more funding. In addition, he pointed out that an increase in acquisitions will be accompanied by the cons of acquisition, such as increase in potential anti-competitive behaviour.

Shardul S. Shroff stated that India is going through good times in terms of making deals, with M&As reaching three-year highs following deals worth USD 90.4 billion in the first 9 months of 2021. Moreover, with the presence of 44 unicorns, private equity has shot up to INR 5.5 lakh crores in the economy, mainly because venture capitalists are looking to invest in a stable legal environment with a possibility of high return and quick exit. However, according to him, it is an opportunity for the target company or startup to not only scale up in capital but also in talent and market share. He further suggested the need for introducing additional parameters to examine an M&A case to avoid ambiguity in assessing a case and preventing unhealthier M&A cases. He also shared his views on one of the most-discussed theories of harm in M&A—the risk of “killer acquisitions”—in which firms acquire nascent competitors only to discontinue the target’s innovation projects, thereby preempting the emergence of future competition. Since killer acquisitions are anti-competitive and have adverse consequences on consumer welfare, he urged that CCI’s notification towards dealing with this issue as an existing methodology of assessment is inadequate, as both the acquirer and target may have modest assets, and hence, most such transactions do not trip any jurisdictional thresholds. He also highlighted the need to define the

term "control" in an M&A case, as the Competition Act does not provide any guidance regarding the set of rights that constitute control. To this extent, according to him, CCI must be commended for setting out its interpretation of this term, basing it on international jurisprudence, for the cases it is handling. He further stated that the role of CCI also has to be reviewed in the presence of other regulators, such as the proposed Data Protection Authority, which is expected to take care of privacy harms and data protection, especially on jurisdictional rights.

Vijay Shekhar Sharma discussed the motivation, grandeur, and spillover effects of M&A in the digital ecosystem. According to him, in M&As involving physical assets, the effect of one firm is, to some extent, limited. However, in digital economy, M&As can impact multiple spheres of a layperson's life, making it even more important to study in detail. He also pointed out that most M&A cases have nuanced business sustainability and associated ramifications. As the regulator, CCI shall have the capacity and knowledge to understand these tech-led M&As from all viewpoints, including legal, business, and technology. Hence, it is very important to augment the capacity of CCI to understand the intentions of M&As in the tech space to make effective decisions and regulations. He further stated that the regulator shall not distinguish between multinationals and domestic firms in formulating decisions and policies with respect to M&As. The basics regarding M&A regulation shall be: (a) to ensure level playing field in the market; and (b) to ensure fair competition.

Abhiraj Singh Bhal added that, from a potential acquirer point-of-view, there is a need to look out for market entry in domestic and international geographies for organisations that can add new technology capabilities and for targets to move into adjacent businesses. He further mentioned that, in the services marketplace, there are enough checks and balances in place for any M&A, and CCI has been largely proactive and takes a cautionary approach towards intervention.

Akshant Goyal presented M&As as a meaningful driver of growth of the startup ecosystem, more so than traditional businesses, and asserted that the role of regulators, including CCI, should be linked to the scale of the businesses for facilitating smaller startups to attain scale. He also stated the need to keep regulatory interventions timely so as to reduce the uncertainties encountered by parties.

Phalgun Kompalli stated that M&As furnish a way to expand the global footprint, providing localised content and services in targeted geographies. As a leading edtech firm, his firm, upGrad, looks at imparting the knowledge gained over time to other, smaller startups by being either an investor or acquirer.

Complementing this view**, Ramana Telidevara** stated that acquirers also look at smaller firms instead of organic growth to enter niche markets quickly. Hence, M&As are a win-win for both the acquirer and the firm. The acquirer can provide the visibility of reaching the goal of smaller startups in a much shorter time span than it would otherwise have taken.

Prashant Tandon mentioned that, as part of Tata Group, they have undertaken many acquisitions across the value chain in the pharma industry and have not encountered any challenges in M&A regulations. However, the digital ecosystems and startups in this economy have very different characteristics compared to the brick-and-mortar economy. Thus, he pointed out that there is often a crowding of capital on one or more firms, while capital dries up for other, smaller firms in the space. Therefore, from the regulator's point-of-view, it is important to look at M&As as either enabling the ecosystem or disabling it.

Further, the regulator's decisions should be quick, as it is important for the survival of the acquirer as well as the firm that is being acquired, since waiting 3–6 months on an M&A decision is not really an option for startups. This view was also supported by **Rohin Dharmakumar**, who stated that timeliness and certainty in M&A regulation and application processing are definitely warranted, as any deviations from this may lead to the breakup of potential good M&As; decrease valuation exponentially; and also increase the probability of possible shutdown of startups.

According to **Suniel Maggo**, the following are important from the viewpoint of startups: (a) Friendly tax regime; (b) Favourable fundraising; (c) Fair and transparent policies; and (d) Financial discipline. With reference to M&As, the important points to note are: (a) multiplicity of regulations and regulatory agencies to deal with; (b) accuracy of valuations; and (c) due diligence and avoid shortcuts. If these are taken care of, it will be a big relief to startups when there are M&As.

Chinnu Senthilkumar asserted that we need to retune the metrics for measurement of market dominance, as some of the measures applicable to the brick-and-mortar industry may not hold good for digital industries. Further, instead of reviewing a single M&A, regulators should see patterns across many M&As in the same or different sectors as well as transactional over time, so that these patterns can be used to make regulatory decisions. The issue of cyber security in the context of digital M&As is also very important. Further, in line with the view of an earlier panellist, he stated that CCI should look at augmenting its capacity by incorporating researchers, think tanks, and academia in this role. CCI should also look at having branch offices in places such as Bengaluru, the tech capital, and Mumbai, the financial capital. It should also look at active partnerships with the Federal Trade Commission (FTC) in the US as well as European tech regulators, and possibly have branch offices in countries with whom India has significant digital trade.

Gautam Chopra stated that there is a need for regulation, especially in the healthcare system. There is an urgency for CCI to make quicker decisions on stressed asset firms. The Ministry of Corporate Affairs has released guidelines that decisions in such cases should be taken within 30 days, as opposed to the previous 45 days. Fast-tracking of such cases will improve certainty in the decision-making process.

Rohin Dharmakumar brought up the issue of market dominance and significant market power (SMP). He cautioned that it is no longer permissible to use 51% market share as the threshold for assessing SMP in digital markets due to minority investments, strategic partnerships, and so on. He further pointed out the effect of big data in the M&A equation and stated that relooking at privacy laws and a comprehensive regulation, taking into account all the above factors, is essential for the digital economy in India.

The audience asked the panellists how long is too long when it comes to approval mechanisms for M&As: Is 3 months on the regulatory decision a long duration for investors and firms?

The panellists responded that there have been regulatory decisions that were taken in a record 17 days. However, some investigations can take nearly a year depending on the complexity of the transaction. We do believe that CCI is cognizant of startups' urgency for faster approvals. If

the investor approaches CCI, there is a misapprehension that the investor wants to have control over the firm, which is not true. Investors have a strategic view of their investments and are interested in growth of the firm and not in retaining control.

Subsequently, with respect to the apprehension that startups' ideas can be stolen, the audience raised a question regarding the mode to be adopted to preserve ideas either as patents or trade secrets.

To this, **Sunil Maggo** replied that it would be in the interest of start-ups to create an "idea bank" so that their ideas are preserved and piracy threats are minimal. As a startup association, the Chamber of Startups should be a single platform to voice concerns about the need for the intellectual property protection of startups.

Prashant Tandon said that it is very important to have investors with good intent, such that the expectations of the investor and startups are clearly defined up front. Further, it is important that the motivation for the investor–startup relationship is clearly understood by the parties concerned, though it might be difficult to have it enforced through contractual clauses.

Gautam Chopra responded that, in their relationship with their investors, they made a list of potential competitors and requested the investors not to invest in these competitors as far as possible. In a dynamic competitive landscape, new entrants keep emerging as competitors. However, having a list like this will help clarify the intent of the investor–firm relationship.

V. Sridhar mentioned that there are clearly laid out thresholds for horizontal M&As, such as market share, spectrum in case of telecom, and revenue share. However, in vertical M&As, where firms acquire across the supply chain, it is difficult for the regulator to define such thresholds and make decisions. The FTC has been struggling with these cases.

Prashant Tandon asserted that, if a firm acquires along the supply chain, it will become large enough to kill competition. One way to solve cases such as these are to have an expert panel in the specific industry vertical and analyse the conditions of the case for resolution. There is a need for structural solution rather than applying it on a case-by-case basis.

According to **Rohin Dharmakumar,** in the digital ecosystem, M&As happen not due to capital but because of talent. Startups have talent in different niche areas. Acquisitions of firms with talent provide an advantage to firms. He further inquired whether, in these areas, regulators should also look at M&As. If so, how should metrics for approving such cases be measured and defined, as every deal may look suspicious?

Ramana Telidevara highlighted that, for seamless acquisitions, CCI should frame unambiguous rules, with reference to cases already being handled in other countries, so that there is certainty in M&As in the digital startup ecosystem to ensure that startups enjoy a certain amount of liberty and freedom which cannot be curbed by M&As.

4. Concluding Remarks

The objective of this workshop was to uncover as many problems, opportunities, solutions, and objectives as possible from the unique lens of each of the panellists. This did not intend to force any predetermined agendas but instead, see the world through their eyes and hopefully try to have a collaborative discussion and possible consensus.

The workshop saw engaging discussions on two themes—**"Big Tech and Startups: Synergies and Challenges"** and **"Mergers and Acquisitions"**. In the first session on "**Big Tech and Startups: Synergies and Challenges**", the following important points were highlighted in the discussion by the panellists:

- Ease of doing business: Easier-to-follow taxation system, stable and unequivocal policy regime, mitigation of global political risks.
- Moving up the value chain: Indian startups should move away from "me too" to innovative business models, technology-driven enterprises, and unique value proposition embedded in the Indian context as well as replicable systems for global reach.
- Factors in adoption: The government massively supported Aadhaar as a foundational digital ID for its inclusive adoption, which is purely supply-driven; NPCI, which is a consortium of all stakeholders, including financial institutions and digital payment providers, supported UPI to scale up through its captive network of members, which is mainly demand-driven. However, in the

account aggregator framework, while there is a huge demand for aggregated financial data, the supply side is weak and lacks government support. Hence, there is a need for creating a framework where there is enough supply and demand for the system to reach exponential adoption.

- Interoperability and portability: Interoperability is related to sharing both personal and non-personal information across digital platforms through open interfaces for the benefit of stakeholders, for example, the account aggregator framework and ONDC using the Beckn protocol. Portability is the stakeholders (e.g., consumers and suppliers) taking their personal and related information collected and stored in one platform to another platform. Portability involves the transfer of property rights of the information by the platform that enabled its collection to the individuals. There is a need for legal and policy guidelines for both. While sharing non-personal data is included in the revised Data Protection Bill, it remains to be seen what incentives firms have in sharing such information.
- Create solutions that matter: Startups need to find the correct problems to solve, and regulations and guidelines should be formulated to mitigate the adverse effects on competition and consumer welfare while simultaneously nurturing innovation.

In the second session on "**Mergers and Acquisitions**", the following important points were brought out in the discussion by the panellists:

- Benefit to smaller startups: Alliances and merges and acquisitions bring market access, scale economies, and financial stability to smaller startups. They also provide a stable exit option for promoters.
- Benefit to larger startups: M&As of smaller firms provide the acquiring firm with access to the technology and skillsets of the smaller niche startup, enabling the acquiring firm certain advantages in the defined market.
- Avoidance of killer acquisitions: Regulators should watch out for killer acquisitions in which the acquiring firm gains access to specific technologies and business models of the acquired firm that competed with it in the defined market, thereby eliminating competition.

- Augmenting the capacity of the regulator: As the startup ecosystems and the involvement of big tech in the Indian market grow exponentially, there is a need for augmenting the capacity and resources of the regulator.

Altogether, the sessions ended on a positive note—that Indian start-ups are here to stay and that they will, in fact, compete effectively with big tech. The discussions made it evident that CCI is certainly headed in the right direction to provide greater certainty, clarity, and enforcement in its regulations and policies.