

Blue Paper | Governing Tech Platforms in India



@TakshashilaInst 



The Takshashila Institution hosted a roundtable on 24 January 2020 to discuss policy solutions to some of the unique issues in platform marketplaces. Finding the balance between mitigating the harm caused by platforms while ensuring that these businesses continue to provide an enormous amount of social surplus is of paramount importance.

This Blue Paper collates and presents the comments, remarks, and analysis made during the Roundtable by the participants.

Background





The discussion at the Roundtable broadly covered the following areas:

1. Defining a Relevant Marketplace
2. Governing Tech Platforms
3. Platform Power

Agenda of the Roundtable



On defining 'Relevant Marketplace'

- Platforms are 2-sided markets. Both sides must be considered as distinct markets.
- Characteristics, Price and Intended Use are the areas within which a relevant market should be defined. Characteristics and Intended Use are hard to define in the context of a marketplace.
- Start with a narrow market definition and then expand it till the point SSNIP test indicates a monopoly. eg. Amazon's market position with respect to books, apparel section.
- A platform as a whole should not be considered a relevant market.

Relevant Marketplace



On Competition Cases

- Cases of competition should be taken up only after establishing dominance in the market and dominance can be established only after defining the relevant marketplace of operation.
- Current Indian approach is not consistent. Commerce - online v/s offline were defined as being the same market. However, for a particular category of products ecommerce v/s offline were not considered to be the same market by CCI.
- The Supreme Court directed the CCI to look into dominance without defining 'relevant marketplace' which sets a bad precedent.
- CCI has not evaluated business models until now.
- A framework needs to be evolved which CCI can use.

Relevant Marketplace



On SSNIP (Small but Significant Non-transitory Increase in Prices) tests

- The SSNIP Test identifies the smallest relevant marketplace where a hypothetical monopolist can **profitably** impose a small but significant price increase. Usually counted as 5-10% price increase for at least 12 months.
- Applying SSNIP Test:
 - ❑ Start with the smallest possible market and determine if a 5% increase in price raises profitability.
 - ❑ If not, then the firm does not have sufficient market power to raise prices.
 - ❑ Next closest substitute is added to the relevant market and the test is repeated.
 - ❑ Process continues until the point is reached where a hypothetical monopolist could profitably impose a 5% price increase.
 - ❑ Market is then considered to be defined.

Relevant Marketplace



On the goals of competition policy

- Maintaining competition in the market should be the aim.
- It should be driven by economics and rules must be consistent.
- Loose, guiding principles are preferable to highly specific definitions.
- New set of antitrust principles are not required for new technologies.

On interventionist policy

- Intervention should only be considered when consumers are harmed by monopolist behaviour such as underproducing, overcharging or delaying technological development.
- The bar to intervene must be set very high.
- Government choosing winners is a problem in any market.
- In 2019, the Competition Law Review Committee recommended that Section 4 of Competition Act, 2002 be made more overtly effects based.

Relevant Marketplace



On 2-sided markets

- Treat both sides of the market as consumers. eg. Both buyers and sellers on an ecommerce marketplace should be considered consumers of the marketplace.
- Should net harm or net welfare be considered? One side of the market could gain at the expense of the other. Net welfare (harm) can identify these situations.
- When price is 0, harm can shown by documenting declining quality of service.
- Social networks use part of the consumer welfare argument stating that more data will translate into better targeted ads. However, this ignores the principle that gathering user data may not be in the consumer's interest.
- Federal Cartel Office (Germany) had ruled that Facebook has abused its dominant position in the private social network market.

Relevant Marketplace





On guiding principles for India

- India does not have an overarching guiding principle.
- Consumer preferences need to be understood better.
- Consumer welfare standard should be at the centre of competition policy. There needs to be consistency of rules.
- The standards for interfering in any market should be set quite high.
- Need to increase the capacity of CCI to identify and correct antitrust issues in this space.

Relevant Marketplace



On Barriers to Entry

- High switching costs could result in high barriers to entry.
- Barriers to entry not innately negative, certain industries that require investment have built-in barriers *eg.* Oil.
- Not all network effects lead to lock-in. Multi-homing on buyer side is common, especially in networks with low switching costs.
- Whatsapp has a lock-in, but Uber/Ola do not.
- Forced interoperability is an oft proposed solution to lowering barriers to entry. It has the potential to do harm in the long term.
- Unless a establish lock-in can be established, a barrier to entry by itself is not anti-competitive.

Governing Tech Platforms



On Network effects and Predation

- Direct and Indirect network effects lead to high switching costs.
- Data network effects also create a positive data feedback loop.
- Network effects and predation are linked. Predation can be a means to tip network effects.
- Economists should be able to identify which network effects can lead to dominance.

On Dominance and Monopoly

- Establishing dominance or a monopoly by itself is not illegal. Maintaining and extending it through illegal means is against the law.
- In case of dominance - conduct and effect of conduct on competition is relevant.
- In case of monopoly - acquiring and/or maintaining the monopoly through illegal means is a problem.
- Abuse should not be presumed in either case.

Governing Tech Platforms



On Price Parity clauses

- Wide clauses are problematic and result in consumer harm. Narrow clauses are acceptable.
- EU has restricted price-parity clauses. In India, CCI issued guidelines in January 2020.
- Product differentiation can be used to work around price parity clauses.
- Relative market power plays a role. The recipient of a price parity clause can also exercise market power.

Platform Power



On Vertical Integration and Platform Neutrality

- Implies activity both in the ‘raw-material market’ and in ‘the selling market’.
- Vertical Integration by itself is not illegal. However, there is a preliminary assumption of market power with it.
- Can violate platform neutrality if competitors listings are excluded entirely or ‘downranked’ in search results.
- Platforms accrue benefits from the data they gather about consumer spending.
- Harm in a lot of cases is very subtle and needs thorough research to be identified.
- Listings today are based on algorithmic black boxes and no longer deterministic.

Platform Power





The Roundtable was chaired by Anupam Manur, Research Fellow at the Takshashila Institution and Utkarsh Narain, Research Analyst at The Takshashila Institution. The following is the list of participants:

1. Avirup Bose - Associate Professor, Jindal Global Law School
2. Hemangini Dadwal - Partner, Competition Practice, AZB & Partners
3. Karthik Shashidhar - Quant and Management Consultant
4. Mihir Mahajan - Technical Specialist, IP Spring
5. Naganand Doraswami-Managing Director & Founder, Ideaspring Capital
6. Vikram Sinha - Junior Fellow, IDFC Institute
7. Pranay Kotasthane - Research Analyst, The Takshashila Institution
8. Rohan Seth - Research Analyst, The Takshashila Institution
9. Prateek Waghre - Research Analyst, The Takshashila Institution

List of Participants

