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**STANDING COMMITTEE ON FINANCE
(2022-23)**

SEVENTEENTH LOK SABHA

MINISTRY OF CORPORATE AFFAIRS

[Action taken by the Government on the Observations/Recommendations contained in Fifty-Third Report (17th Lok Sabha) on the subject 'Anti-Competitive Practices by Big Tech Companies']

SIXTIETH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

July, 2023 / Ashadha, 1945 (Saka)

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(SEVENTEENTH LOK SABHA)

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[Action taken by the Government on the Observations/Recommendations contained in Fifty-Third Report (17th Lok Sabha) on the subject 'Anti-Competitive Practices by Big Tech Companies']

Presented to Lok Sabha on 27.07.2023

Laid in Rajya Sabha on 27.07.2023



LOK SABHA SECRETARIAT
NEW DELHI

July, 2023 / Ashadha, 1945 (Saka)

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* Not appended in the cyclostyled copy

COMPOSITION OF STANDING COMMITTEE ON FINANCE (2022-23)

Shri Jayant Sinha - Chairperson

MEMBERS

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri Sukhbir Singh Badal
4. Shri Subhash Chandra Baheria
5. Dr. Subhash Ramrao Bhamre
6. Smt. Sunita Duggal
7. Shri Gaurav Gogoi
8. Shri Sudheer Gupta
9. Shri Manoj Kishorbhai Kotak
10. Shri Pinaki Misra
11. Shri Hemant Shriram Patil
12. Shri Ravi Shankar Prasad
13. Shri Nama Nageshwara Rao
14. Prof. Sougata Ray
15. Shri P.V. Midhun Reddy
16. Shri Gopal Chinayya Shetty
17. Shri Parvesh Sahib Singh
18. Dr. (Prof) Kirit Premjibhai Solanki
19. Shri Manish Tewari
20. Shri Balashowry Vallabbhaneni
21. Shri Rajesh Verma

RAJYA SABHA

22. Dr. Radha Mohan Das Agarwal
23. Shri Raghav Chadha
24. Shri P. Chidambaram
25. Shri Damodar Rao Divakonda
26. Shri Ryaga Krishnaiah
27. Shri Sushil Kumar Modi
28. Dr. Amar Patnaik
29. Dr. C.M. Ramesh
30. Shri G.V.L. Narasimha Rao
31. Shri Pramod Tiwari*

SECRETARIAT

1. Shri Siddharth Mahajan - Joint Secretary
2. Shri Ramkumar Suryanarayanan - Director
3. Shri Puneet Bhatia - Deputy Secretary
4. Ms. Yugma Malik - Committee Officer

* *Vide* Rajya Sabha Bulletin Part-II no. 63014 dated 13.03.2023, Shri Pramod Tiwari was nominated to the Standing Committee on Finance (2022-23) on 13th March, 2023 *vice* Dr. Manmohan Singh, who resigned from the Committee w.e.f. 9th February, 2023.

INTRODUCTION

I, the Chairperson of the Standing Committee on Finance, having been authorized by the Committee, present this Sixtieth Report on action taken by Government on the Observations / Recommendations contained in the Fifty-Third Report of the Committee (Seventeenth Lok Sabha) on 'Anti-Competitive Practices by Big Tech Companies'.

2. The Fifty-Third Report was presented to Lok Sabha / laid on the table of Rajya Sabha on 22 December, 2022. The Action Taken Notes on the Observations/Recommendations were received from the Government *vide* their communication dated 19 April, 2023.

3. The Committee considered and adopted this Report at their sitting held on 20 July, 2023.

4. An analysis of the action taken by the Government on the Recommendations contained in the Fifty-Third Report of the Committee is given in the Appendix.

5. For facility of reference, the Observations/Recommendations of the Committee have been printed in bold in the body of the Report.

NEW DELHI
20 July, 2023
29 Ashadha, 1945 (Saka)

JAYANT SINHA,
Chairperson,
Standing Committee on Finance

REPORT

CHAPTER – I

This Report of the Standing Committee on Finance deals with action taken by Government on the recommendations/observations contained in their 53rd Report (Seventeenth Lok Sabha) on the subject 'Anti-Competitive Practices by Big Tech Companies' pertaining to Ministry of Corporate Affairs which was presented to Lok Sabha / Laid in Rajya Sabha on 22nd December, 2022.

2. The Action Taken Notes were received from Ministry of Corporate Affairs on 19th April, 2023. The Action Taken Notes have been received as a conclusive summary of all the 14 recommendations contained in the Report. The reply has been analyzed and categorized as follows:

- (i) Recommendations/Observations that have been accepted by the Government:

Recommendation Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14

(Total - 14)
(Chapter- II)

- (ii) Recommendations/Observations which the Committee do not desire to pursue in view of the Government's replies:

(Total NIL)
(Chapter- III)

- (iii) Recommendations/Observations in respect of which replies of Government have not been accepted by the Committee:

(Total NIL)
(Chapter- IV)

- (iv) Recommendations/Observations in respect of which final replies by the Government are still awaited:

(Total NIL)
(Chapter- V)

3. The Committee will now deal with and comment upon the action taken by the Government.

Recommendations (Sr.No.1-14)

4.

Traditional Physical Markets vs. Digital Markets and Need for ex-ante Regulation

i) The Committee note that unlike traditional physical markets where returns increase only upto maximum efficiency point with increase in size and decrease thereafter i.e. there is diminishing return to size, digital markets have increasing returns to size, driven primarily by learning and network effects. The Committee further understand that digital businesses tend to have rapidly diminishing marginal costs as they grow and scaling quickly is the best strategy which often results in winner-take-all market outcomes, and hence, digital markets 'tip' quickly and one or two winners or leading players emerge in a short span of time. The Committee take serious note of the peculiar challenge posed by the winner-take-all markets where winners emerge within 3-5 years after the market starts to develop and by the time policies can be formulated or anti-competitive behaviours be adjudicated, markets tip in one direction and a winner emerges. Therefore, the Committee recommend that competitive behaviour needs to be evaluated *ex ante* before markets end up monopolized instead of the *ex post* evaluation being carried out at present.

Defining Systemically Important Digital Intermediaries (SIDIs)/Digital Gatekeepers

ii) The Committee opine that, India must identify the small number of leading players or market winners that can negatively influence competitive conduct in the digital ecosystem, as 'Systemically Important Digital Intermediaries (SIDIs)' based on their revenues, market capitalization, and number of active business and end users. The Committee further feel that India should also adopt definitions to ex-ante regulate the behaviour of systemically important digital intermediaries as has already been done by various legislations across the world. The Committee, thus recommend that stakeholders, working with the Competition Commission of India (CCI) and the Central Government, must collaborate to arrive at a reasonable definition of SIDIs. Further, the SIDI within certain fixed months of its online platform being designated as a 'Systemically Important Digital Intermediary', and thereafter annually, submit a report to the Commission describing in a detailed and transparent manner the measures it has

implemented to comply with its mandatory obligations. The Systemically Important Digital Intermediary operator should also publish on its website a non-confidential summary of the report.

Anti-Steering Provisions

iii) The Committee understand that anti-steering provisions are clauses whereby a platform prevents the business users of the platforms from 'steering' its consumers to offers other than those provided by the platform that may be cheaper or otherwise potentially attractive alternative in terms of a better interface. The Committee thus recommend that an SIDI should not condition access to the platform or preferred status or placement on the platform on the purchase or use of other products or services offered by the platform that are not part of or intrinsic to the platform.

Self Preferencing/Platform Neutrality

iv) The Committee understand that self preferencing is a practice whereby a platform favours its own services or its subsidiaries directly or indirectly in situations when it has a dual role of providing the platform and competing on the same platform. The Committee opine that platform neutrality must be ensured at all costs as otherwise it can lead to a negative effect on downstream markets, as their profits decline and an unfair advantage is provided to leading player i.e. the platform itself. The Committee strongly recommend that an SIDI must not favour its own offers over the offers of its competitors when mediating access to supply and sales markets, in particular, when presenting its own offers in a more favourable manner; and when exclusively pre-installing its own offers on devices or integrating them in any other way in offers provided by the platform.

Bundling and Tying

v) The Committee note that bundling and tying are prevalent across sectors in the digital market creating asymmetry in pricing, binding developers into taking all services from app store operators and removing competition from the market thus harming innovation and consumer interest. Further, bundling and tying enable leading players to leverage their market power in one core platform service to another. The Committee, thus, are of the view that an SIDI should not force business users or end

users to subscribe to, or register with, any further services as a condition for being able to use, access, sign up for or registering with any of that platform's core platform service.

Data Usage

vi) The Committee would like to highlight that the data advantage of market leaders, which/who have amassed wealth of personal data over a period of time, overshadows the offerings of newer platforms in terms of quality and data fed personalization, due to which the big tends to get bigger while a small entrant struggles to attain a critical mass of users and user data. Thus, in the interest of fairplay and to ensure a level playing field, the Committee recommend that an SIDI *should not*:

- a. process, for the purpose of providing online advertising services, personal data of end users using services of third parties that make use of core services of the platform;
- b. combine personal data from the relevant core service of the platform with personal data from any further core services or from any other services provided by the platform or with personal data from third-party services;
- c. cross-use personal data from the relevant core service in other services provided separately by the platform, including other core services of the platform, and vice-versa; and
- d. sign in end users to other services of the platform in order to combine personal data, unless the end user has been presented with the specific choice and has given consent.

The Committee further opine that an SIDI *should not* use, in competition with business users, any data that is not publicly available, that is generated or provided by those business users in the context of their use of the relevant core services of the platform, or of the services provided together with the relevant core services, including data generated or provided by the end users of those business users.

Mergers and Acquisitions

vii) The Committee note that certain mergers and acquisitions, particularly in the digital space besides having a deep impact on the market are not being captured by Competition Commission of India because they do not meet the threshold of assets and turnover. The Committee recommend that an SIDI should inform the Competition Commission of India of any intended concentration, where the merging entities or the target of concentration provide services in the digital sector or enable the collection of data, irrespective of whether it is notifiable to the Commission. Further, the Committee are of the view that an SIDI should inform the Commission of such a concentration prior to its implementation and following the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest.

Pricing/Deep Discounting

viii) The Committee feel that deep discounting by platforms with market power is a matter of concern when discounts are discriminatory and push prices to below cost levels in certain product categories, thus affecting offline and online retailer's ability to compete. The Committee thus recommend that an SIDI should not limit business users from differentiating commercial conditions on its platform, including price, increased commissions, de-listing, and other equivalent terms and conditions. Further, an SIDI should not prevent business users from offering the same products or services to end users through third-party online intermediation services or through their own direct online sales channel at prices or conditions that are different from those offered through the online intermediation services of the platform.

Exclusive Tie-ups

ix) The Committee understand that exclusive tie-ups by major digital platforms can foreclose markets and constrict competition and can ultimately lead to increased prices for the end-user. The Committee thus recommend that an SIDI should not prevent business users from offering the same products or services to end users through third-party online intermediation services or through their own direct online sales channel at prices or conditions that are different from those offered through the online intermediation services of the platform, so that fair market conditions prevail.

Search and Ranking Preferencing

x) The Committee note that keywords which can either be a single word or a phrase play a critical role in search and ranking preferencing as that is what are used to match with the terms people are searching for in the search bar. Also, selecting high quality, relevant keywords for advertising campaigns can help advertisers reach the right customers at the right time. The Committee thus recommend that an SIDI must provide to any third-party undertaking providing online search engines, at their request, with access to fair, reasonable and non-discriminatory terms to ranking, query, click and view data in relation to free and paid search generated by end users on its online search engines. Further, any such query, click and view data that constitutes personal data should be anonymised and an SIDI, particularly those providing search and ranking functionality should not treat the products, services, or lines of business of the platform more favourably relative to those of another business user and in a manner that is inconsistent with the neutral, fair, and non-discriminatory treatment of all business users.

Third-party Applications

xi) The Committee note that gatekeepers have been found to restrict the installation or operation of third-party applications. The Committee opine that an SIDI should allow and technically enable the installation and effective use of third-party software applications or software application stores using, or interoperating with, its operating system and allow those software applications or software application stores to be accessed by means other than the relevant core services of that platform. Further, the Committee recommend that an exception may only be made in case of preventing data from the SIDI or another business user from being transferred to government of a foreign adversary.

Furthermore, an SIDI should, where applicable, not prevent the downloaded third-party software applications or software application stores from prompting end users to decide whether they want to set that downloaded software application or software application store as their default. It should technically enable end users who must themselves decide to set that downloaded software application or software application store as their default to carry out that change easily to ensure transparency.

Advertising Policies

xii) The Committee note that the Big Tech Company's ad business is a monopolist threat as it owns every step in a system that connects ad sellers and buyers and give the Big Tech companies an unfair edge over the market. The Committee thus recommend that an SIDI should not process, for the purpose of providing online advertising services, personal data of end users using services of third parties that make use of core services of the platform. It should provide advertisers, information on a daily basis, regarding price paid by the advertiser and the remuneration received by the publisher. It should provide advertisers and publishers with access to the performance measuring tools of the gatekeeper and the data necessary for advertisers and publishers to carry out their own independent verification of the advertisements inventory, including aggregated and non-aggregated data.

Further, the Committee note that India has diverse and numerous news publishers who get advertising revenues primarily through SIDIs and are of the opinion that regulatory provisions are required to ensure that news publishers are able to establish contracts with these SIDIs through a fair and transparent process.

Need for Digital Competition Act

xiii) The Committee feel that India needs to enhance its competition law to address the unique needs of digital markets. Unlike traditional markets, the economic drivers that are rampant in digital markets quickly result in a few massive players dominating vast swathes of the digital ecosystem. The Committee therefore recommend that the government should consider and introduce a Digital Competition Act to ensure a fair, transparent and contestable digital ecosystem, which will be a boon not only for our country and its nascent start-up economy but also for the entire world.

Revamping Competition Commission of India (CCI)

xiv) The Committee feel that India's competition law must be enhanced to meet the requirements of restraining anti-competitive behaviour in the digital markets and hence it is necessary to strengthen the Competition Commission of India to take on the new responsibilities. The Committee would thus suggest that a specialised Digital Markets unit be established within the Commission, staffed with skilled experts,

academics and attorneys, enabling the Commission to closely monitor SIDIs and emerging SIDIs, provide recommendations to the Central Government on designating SIDIs, review SIDI compliance and adjudicate on digital market cases and conduct for efficient and effective monitoring of digital markets *per se*. While doing so, the Committee would also expect that similar unfair practices of other digital players, even though not specifically designated as SIDIs, should also be generally kept track of, monitored and acted upon in larger consumer interest.

5. In their Action Taken Reply, The Ministry of Corporate Affairs has furnished the following conclusive summary for all the 14 recommendations:

"In accordance with the recommendations of the Standing Committee, the Government of India vide order dated 06.02.2023 has constituted a Committee on Digital Competition Law (CSCL) to examine the need for a separate law on competition in digital markets with the following terms of reference:

(i) To review whether existing provisions in, the Competition Act, 2002 and the rules & regulations framed there under are sufficient to deal with the challenges that have emerged from the digital economy;

(ii) To examine the need for an ex-ante regulatory mechanism for digital markets through a separate legislation;

(iii) To study the international best practices 'on regulation in the field of digital markets;

(iv) To study other regulatory regimes/ institutional mechanisms/government policies regarding competition in digital markets;

(v) To study the practices of leading players/ Systemically Important Digital Intermediaries ('SIDIs') which limit or have the potential to cause harm in digital markets; and

(vi) Any other matters related to competition in digital markets as may be considered relevant by the Committee.

Five Meetings of the Committee on Digital Competition Law (CDCL) have been held so far wherein various stakeholders had made presentation and submissions before the Committee.

The Commission has reported that it has established a Digital Markets & Data Unit (DMDU) - a specialized interdisciplinary center of expertise for Digital Markets with the composition of various officers from the different divisions and multiple streams of CCI.

The role and functions of DMDU identified by the Committee are as under:

- i. To facilitate cross-divisional exchange/ discussion on digital market issues.
- ii. To act as a nodal point for stakeholder engagement across academia, other industry, regulators, international deliberations and government on digital market matters.
- iii. To provide support in data analytics/ management and address the novel enforcement issues of digital markets.
- iv. To lead Market Studies into matters related to digital markets."

6. The Committee understand that a Committee on Digital Competition Law (CDCL) has been constituted by the Government to examine the need for separate law on competition in digital markets with a view to review the existing provisions in the Competition Act, 2002 with respect to the challenges that have emerged from the digital economy; examine the need for ex-ante regulatory mechanism through a separate legislation; study international best practices, other regulatory regimes/institutional mechanisms/government policies regarding competition in digital markets; study practices of Systemically Important Digital Intermediaries(SIDIs) and other matters related to competition in digital markets. The Standing Committee may be apprised about the report/ outcome of the findings of the Committee on Digital Competition Law at the earliest and would urge the Committee on Digital Competition Law to focus on the ten Anti Competitive Practices(ACPs) identified by the Standing Committee on Finance viz Anti-steering provisions, platform neutrality/ self preferencing, bundling and tying, data usage, Mergers and Acquisitions, pricing/deep discounting, exclusive tie-ups, search and ranking preferencing, restricting third party applications and

advertising policies along with other matters and accordingly suggest changes in the Competition law, rules and regulations to ensure market efficiency and fair competitive conduct. In the context of digital markets the Committee feel that *ex-ante* evaluation is of the essence to ensure markets don't end up monopolized.

Further, the Committee note that the Competition Commission of India has established a Digital Market and Data Unit (DMDU) to facilitate cross divisional exchange and act as a nodal point for stakeholder engagement on digital market matters. The Committee would like to stress on the fact that this unit holds significant importance going forth in the future, as digital markets display characteristics distinct from traditional markets and it is of utmost importance that they are properly governed so as to curb the sharp 'tipping' of markets leading to emergence of one or two leading players in a short span of time. The Committee urge and highlight upon the importance of making Digital Market and Data Unit (DMDU) as a robust outfit staffed with skilled experts to help the Competition Commission of India to closely monitor and anticipate movements of SIDs.

NEW DELHI
20 July, 2023
29 Ashadha, 1945 (Saka)

JAYANT SINHA,
Chairperson,
Standing Committee on Finance

Minutes of the Twenty-first sitting of the Standing Committee on Finance (2022-23) The Committee sat on Thursday, the 20th July, 2023 from 1500hrs. to 1700 hrs. in Committee Room '2', Parliament House Annexe Extension Block A, New Delhi.

PRESENT

Shri Jayant Sinha – Chairperson

LOK SABHA

2. Shri S.S Ahluwalia
3. Shri Subhash Chandra Baheria
4. Dr. Subhash Ramrao Bhamre
5. Smt. Sunita Duggal
6. Shri Gaurav Gogoi
7. Shri Sudheer Gupta
8. Shri Manoj Kishorbhai Kotak
9. Shri Hemant Shriram Patil
10. Shri Nama Nageswara Rao
11. Shri Gopal Chinayya Shetty
12. Shri Parvesh Sahib Singh
13. Dr. (Prof.) Kirit Premjibhai Solanki
14. Shri Manish Tewari
15. Shri Balashowry Vallabbhaneni

RAJYA SABHA

16. Dr. Radha Mohan Das Agarwal
17. Shri Ryaga Krishnaiah
18. Shri Sushil Kumar Modi
19. Dr. Amar Patnaik
20. Shri G.V.L Narasimha Rao
21. Shri Pramod Tiwari

SECRETARIAT

1. Shri Siddharth Mahajan - Joint Secretary
2. Shri Ramkumar Suryanarayanan - Director
3. Shri Puneet Bhatia - Deputy Secretary

PART I

2. XX XX XX XX XX XX
XX XX XX XX XX XX.

(The witnesses then withdrew)

PART II

3. XX XX XX XX XX XX
XX XX XX XX XX XX.

(The witnesses then withdrew)

4. Thereafter, the Committee took up the following draft reports for consideration and adoption:

- (i) Draft Report on the subject 'Cyber security and rising incidence of cyber/white collar crimes' of the Ministry of Finance (Department of Financial Services), Ministry of Electronics and Information Technology and Ministry of Home Affairs.
- (ii) Draft Action Taken Report on the recommendations contained in the Fifty-Third Report on the subject 'Anti-Competitive Practices by Big-Tech Companies' of the Ministry of Corporate Affairs.
- (iii) Draft Action Taken Report on the recommendations contained in the Fifty-Fourth Report on Demands for Grants (2023-24) of the Ministry of Finance (Departments of Economic Affairs, Expenditure, Financial Services, Investment & Public Asset Management and Public Enterprises).
- (iv) Draft Action Taken Report on the recommendations contained in the Fifty-Fifth Report on Demands for Grants (2023-24) of the Ministry of Finance (Department of Revenue).

- (v) Draft Action Taken Report on the recommendations contained in the Fifty-Sixth Report on Demands for Grants (2023-24) of the Ministry of Corporate Affairs.
- (vi) Draft Action Taken Report on the recommendations contained in the Fifty-Seventh Report on Demands for Grants (2023-24) of the Ministry of Planning.
- (vii) Draft Action Taken Report on the recommendations contained in the Fifty-Eighth Report on Demands for Grants (2023-24) of the Ministry of Statistics and Programme Implementation.

After some deliberations, the Committee adopted the above draft Reports and authorised the Chairperson to finalise them and present the Reports to the Parliament. The Chairperson also appreciated the Committee Secretariat for putting their sincere efforts in drafting comprehensive reports within a short span of time. The Committee also decided to undertake a Study Tour during the third or fourth week of August, 2023.

The Committee then adjourned.

A verbatim record of the proceedings has been kept.

APPENDIX

(Vide Para 4 of the Introduction)

ANALYSIS OF THE ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS CONTAINED IN THE FIFTY-THIRD REPORT OF THE STANDING COMMITTEE ON FINANCE (SEVENTEENTH LOK SABHA) ON THE SUBJECT 'ANTI COMPETITIVE PRACTICES BY BIG TECH COMPANIES' OF THE MINISTRY OF CORPORATE AFFAIRS

	Total	% of total
(i) Total number of Recommendations	14	
(ii) Recommendations/Observations which have been accepted by the Government (vide Recommendation Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,12, 13 and 14)	14	100%
(iii) Recommendations/Observations which the Committee do not desire to pursue in view of the Government's replies (vide Recommendation Nos. 3)	NIL	--
(iv) Recommendations/Observations in respect of which replies of the Government have not been accepted by the Committee	NIL	--
(v) Recommendations/Observations in respect of which final reply of the Government are still awaited	NIL	--

