

FIRST/MCA/DDCB/02
May 17, 2024

To
Mr. Manoj Kumar,
Under Secretary to the Government of India,
Ministry of Corporate Affairs
Government of India
A Wing, Shastri Bhawan
Rajendra Prasad Road,
New Delhi - 110001

Subject: Consultation regarding the Draft Digital Competition Bill's Impact on MSMEs.

Respected Sir,

This letter is with reference to your letter no. - 06/11/2024-Comp-MCA/256909 dated 03.05.2024 on the subject mentioned above. FIRST India (Forum for Internet, Retailers, Sellers & Traders), a division of India SME Forum (ISF), is thankful for the opportunity to offer our point of view on the Draft Digital Competition Bill.

We would like to bring to your urgent attention that the proposed Digital Competition Bill (DCB) presents potential challenges that could hinder the progress and competitiveness of Indian Micro, Small and Medium Enterprises (MSMEs). We are concerned about the procedural gaps in consultation and consequently, potential implications of the recently proposed bill on micro & small enterprises and the startup ecosystem of our country, and have listed down our concerns:

1. The draft DCB's impact necessitates a multi-stakeholder consultation to balance enabling a trillion-dollar digital economy against an overbearing regulatory regime. Lessons from the European Union's Digital Services Act suggest potential economic losses due to ex-ante regulation. Therefore, we recommend the following:
 - **Reconsider the list of CDS in Schedule I**, focusing on India's unique market conditions and excluding services that are already competitive or substitutable with non-digital services.
 - **Omit the catch-all provision under Section 3(3)(xvi)** and introduce a requirement for market studies before the CCI designates any entity using its discretion.
 - **Amend Section 4(9)** to include a framework for case-to-case analysis when designating ADEs, ensuring only entities with substantial involvement are included.
 - **Refer the Draft DCB to a Parliamentary Committee** for further review and industry consultation to ensure a comprehensive assessment of its implications.
2. Moreover, introducing regulatory complexity to promising sectors like cloud services, video streaming platforms, and online intermediation services could hamper growth and innovation by creating high levels of uncertainty. Uncertainty in regulatory environments can lead businesses to

alter their future investment decisions. The regulatory burdens imposed by the Draft DCB could stifle innovation, discourage investment, and impede the growth of these sectors, ultimately affecting India's digital economy adversely. It is necessary to maintain regulatory certainty to encourage these sectors to grow. The draft DCB should focus on specific services with proven competition harms, excluding those already competitive, to avoid unnecessary compliance burdens and support India's digital capabilities.

3. The criteria for defining 'Core Digital Services' and the variable obligations imposed should be very specific as it is overly broad and vague, creating a high degree of uncertainty and the potential for market distortions.
4. The draft DCB allows the CCI to designate entities as Significant Social Digital Enterprises (SSDE) based on a broad set of criteria, including a catch-all provision under Section 3(3)(xvi), giving the CCI unfettered discretion to designate SSDEs beyond defined user base and revenue thresholds, which could lead to excessive ambiguity and reduce regulatory certainty. However, the UK's Digital Markets Competition and Consumers Bill (DMCC Bill) offers a model with necessary guardrails, such as requiring the regulator to demonstrate that interventions are proportionate and beneficial to consumers. Taking inspiration from this and implementing similar safeguards in the draft DCB would ensure that the CCI's powers are exercised transparently and based on sound factual evidence, thereby maintaining regulatory certainty, and encouraging business confidence.
5. The framework for designating enterprises as Ancillary Digital Enterprises (ADE) is also ambiguous and needs re-drafting. Section 4(9) empowers the CCI to designate ADEs without a clear framework, leading to potential overreach. Designation should be limited to entities with substantial involvement in delivering core digital services, based on objective thresholds, and should consider the business models of each SSDE group to avoid unnecessary compliance burdens. Determining ADEs based on "directly or indirectly involved in the provision of CDS in India" could inappropriately capture multiple enterprises with tangential involvement, increasing the compliance burden across the SSDE's group. To ensure proportionality, only entities with substantial involvement in core digital services should be designated as ADEs, and this designation should be based on a thorough case-by-case analysis of each SSDE's business model.
6. The draft DCB proposes to regulate digital services that are substitutable with non-digital services, creating potential asymmetries in competition. For instance, cloud services coexist with traditional, on-premises IT services. Subjecting only digital services to ex-ante market regulation could distort competition and impact cloud adoption by businesses, leading to lost benefits such as agility and cost optimizations. Regulating digital services without considering their substitutability with non-digital services could create an uneven playing field.
7. Cloud services reduce IT infrastructure costs and time to market for new features, driving innovation and efficiency. They are substitutable with on-premises IT services, offering businesses multiple technology solutions based on functionality, cost, scalability, and reliability. Including

cloud services in the Draft DCB without recognizing these competitive dynamics would represent over-enforcement and distort competition between IT companies with different business models. To address this concern, the Draft DCB should recognize the competitive dynamics between cloud services and on-premises IT services, acknowledging their substitutability and avoid over-enforcement and prevent distortions in competition between IT companies with different business models.

We are eager to continue our engagement on this issue and are ready to provide further information or recommendations as needed. It is important to recognize that instruments like the Digital Markets Act (DMA) are tailored to Europe's specific economic and tech context, where regulation often arises from challenges in fostering successful digital enterprises. Unfortunately, these legislative measures often come at a significant cost to the competitive landscape and are implemented without adequate assessment of their impact on various services, which differ greatly from one another. Such measures, often influenced by past or pending antitrust cases related to specific online services, are extended to other services without factual evidence of similar harms in India's legislative context.

Thanking you in anticipation of a positive response from you.

With sincere regards,



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