
Platforms, Competition & Consumer Protection Issues Falling between Regulatory Stools?

The Centre for Communication Governance (CCG)
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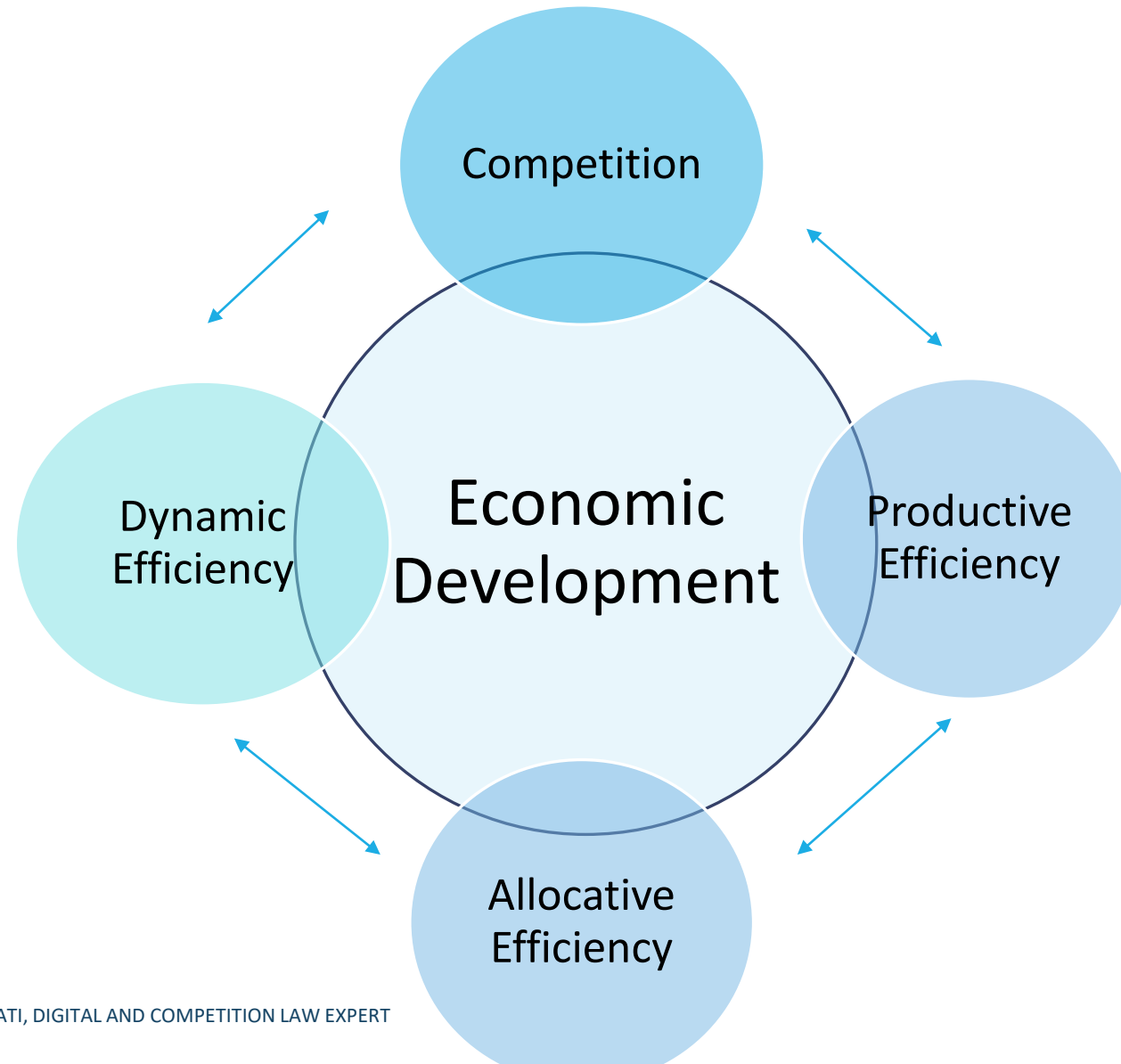
From Which End Do You View the Issue!

INTRODUCTION

Why is Competition Important?

- Competition places the burden on firms to be efficient, innovative and customer focused in order to thrive and survive.
- Leads to include lower prices, higher productivity, **innovation**, more and better customer choices.
- Competition is held to be the most efficient mechanism available for organizing, operating, and disciplining economic markets
- Competitive markets distribute resources efficiently and fairly without any need for a single centralized controlling authority

Why is Competition Important



Why is Competition Important



PUT YOURSELF
IN OUR SHOES

Be Business
Like



How to Flourish in Business 101

PORTER'S 5 FORCES ANALYSIS

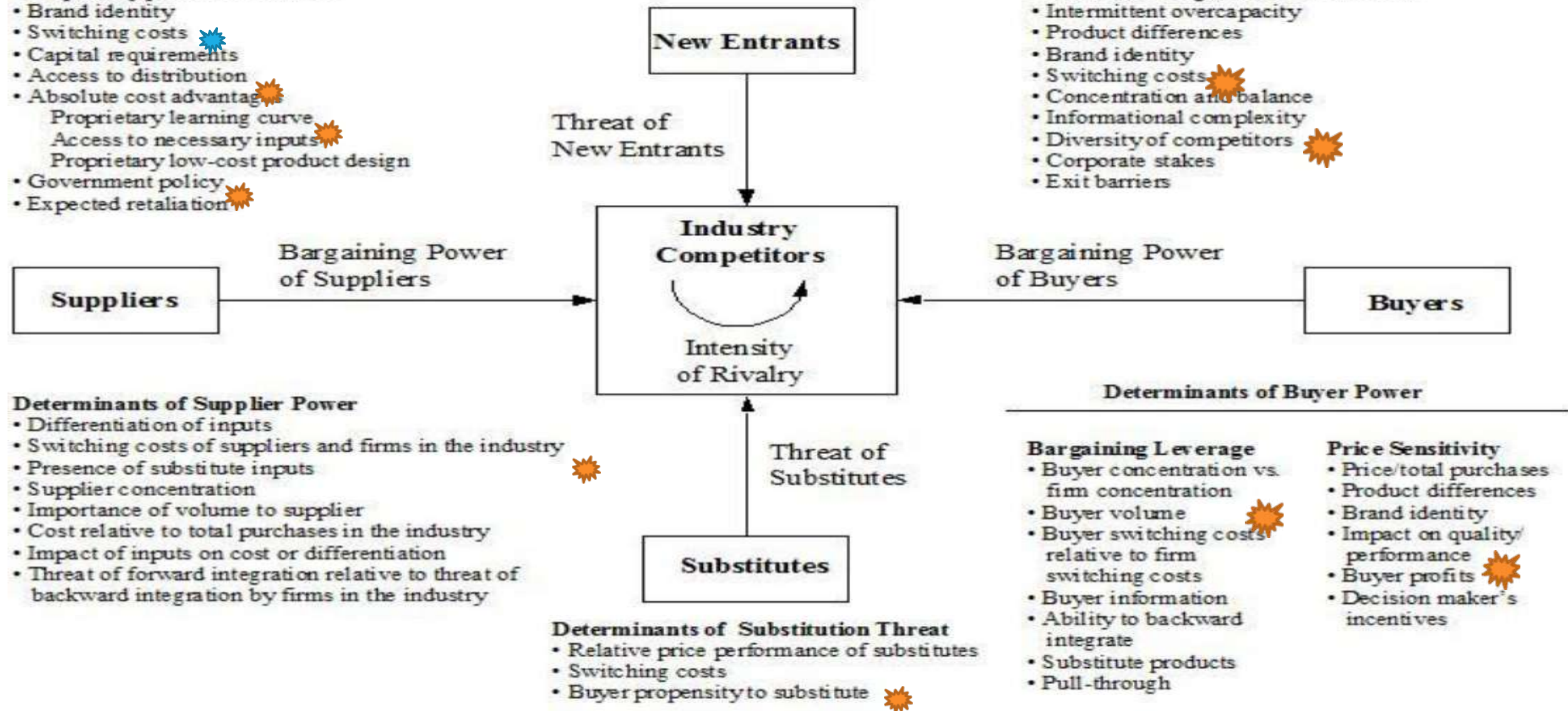


Entry Barriers

- Economies of scale
- Proprietary product differences
- Brand identity
- Switching costs
- Capital requirements
- Access to distribution
- Absolute cost advantage
 - Proprietary learning curve
 - Access to necessary inputs
 - Proprietary low-cost product design
- Government policy
- Expected retaliation

Rivalry Determinants

- Industry growth
- Fixed (or storage) costs / value added
- Intermittent overcapacity
- Product differences
- Brand identity
- Switching costs
- Concentration and balance
- Informational complexity
- Diversity of competitors
- Corporate stakes
- Exit barriers



PUT YOURSELF
IN OUR SHOES

AS A
POLICY....



The Regulatory Landscape



OUTLINE

- From Platforms to Ecosystems
- More than Market Power
- Bagsful of Tricks
- Harmful Business Model & Consequences
- Regulatory Antidotes
- Final Thoughts
 - The One thing that Matters
 - Full Circle

More than (Market) Power

DIGITAL PLATFORMS TODAY

The Brilliant Business Model

Reduction in transaction cost

- No brick and mortar market places
- No physical records,
- Far less human labour
- Less risks
- More contracting

Economies of Scale

Network Effects

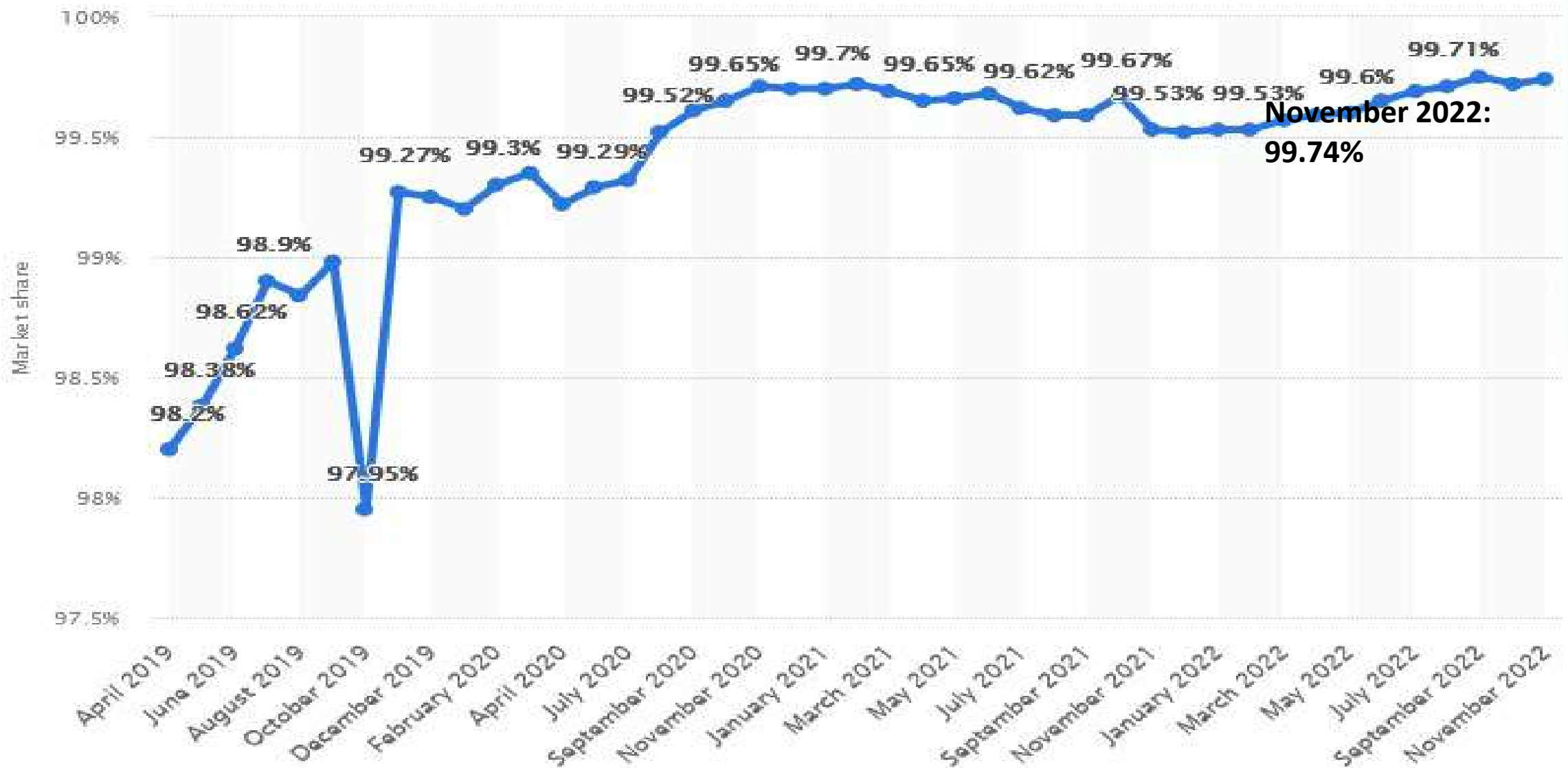
The Not So Secret Sauce

Capturing Value

- Consumers
- Vendors
- Publishers
- App Developers
- Advertisers

Outsourcing Risk

Share of Google in the Mobile Search Engine Market, India



THE PRE-UBER TAXI BUSINESS

A SINGLE TAXI FIRM

THE PHYSICAL COMPONENT

- moving people between locations in taxis
- driving taxis to passengers

THE INFORMATION COMPONENT

- receiving bookings
- efficiently allocating bookings to available taxis
- screening/managing drivers

THE POST-UBER TAXI BUSINESS

INDEPENDENT DRIVERS
(operate the 'physical business')

UBER APP & BACK END
(global information broker)

THE PHYSICAL COMPONENT

- moving people between locations in taxis
- driving taxis to passengers

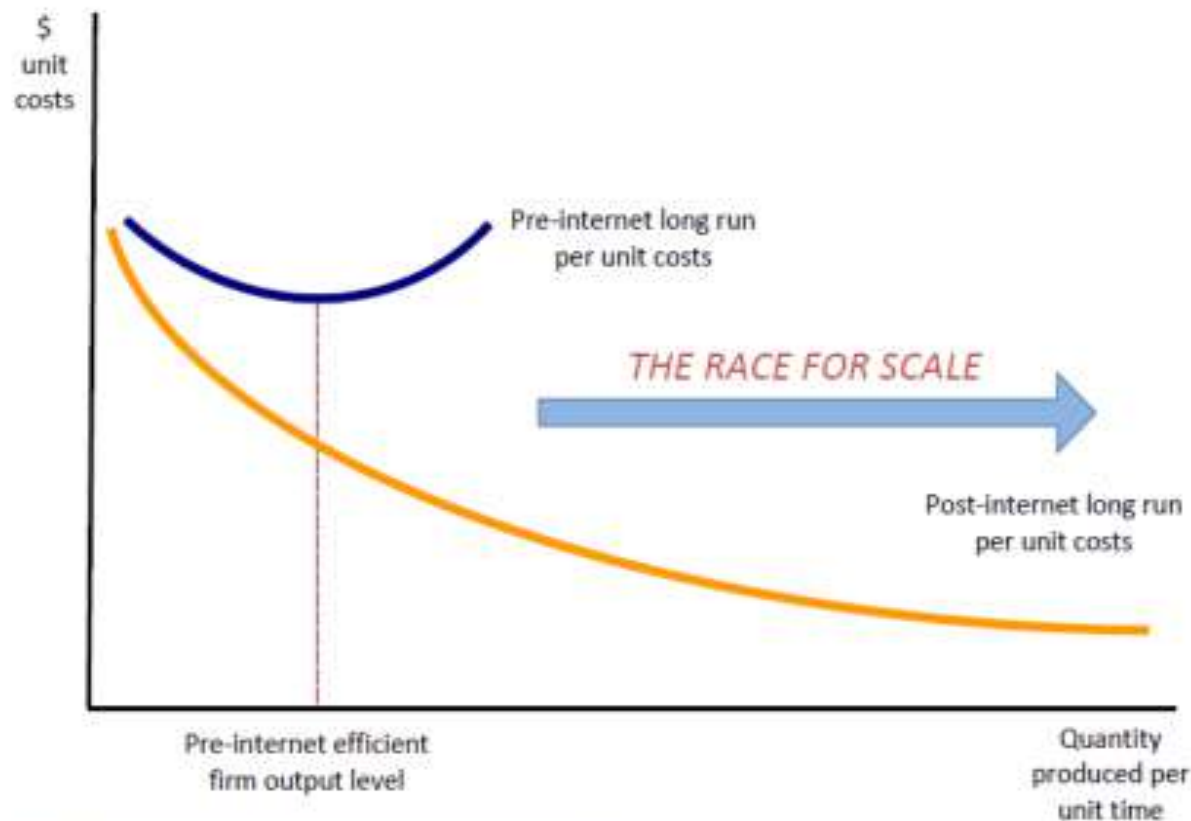
THE INFORMATION COMPONENT

- receiving bookings
- efficiently allocating bookings to available taxis
- screening/managing drivers

Source: Systems Knowledge Concepts Pty Ltd (www.skc.net.au)

The Not So Secret Sauce

Decreasing Costs & the Advantage of Scale



Source: Systems Knowledge Concepts Pty Ltd (www.skc.net.au)

- Since diseconomies of scale don't set in, the lower per unit cost places giants at a huge advantage
- Bolstered by network effects

Source: ITU GSR 16 Discussion paper

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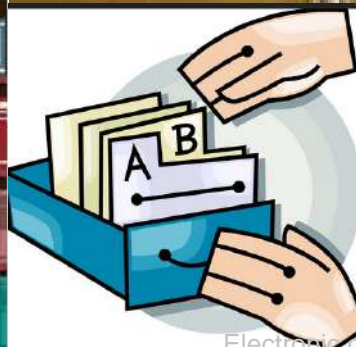
A Platform Gone virtual



W.P. 33

SPEAKER, HYDE PARK, LONDON.

Platform to Ecosystem



Platform to Ecosystem



The Not So Secret Sauce

BIG DATA

- Large Volumes of a Variety of data collected at high Velocity, processed by computing software to produce unique data sets with significant commercial Value

BIG DATA

- *When large sets of data are fused and then mined, they bring together new information that may enable a seller, or a competitor, to better understand and exploit the market.*

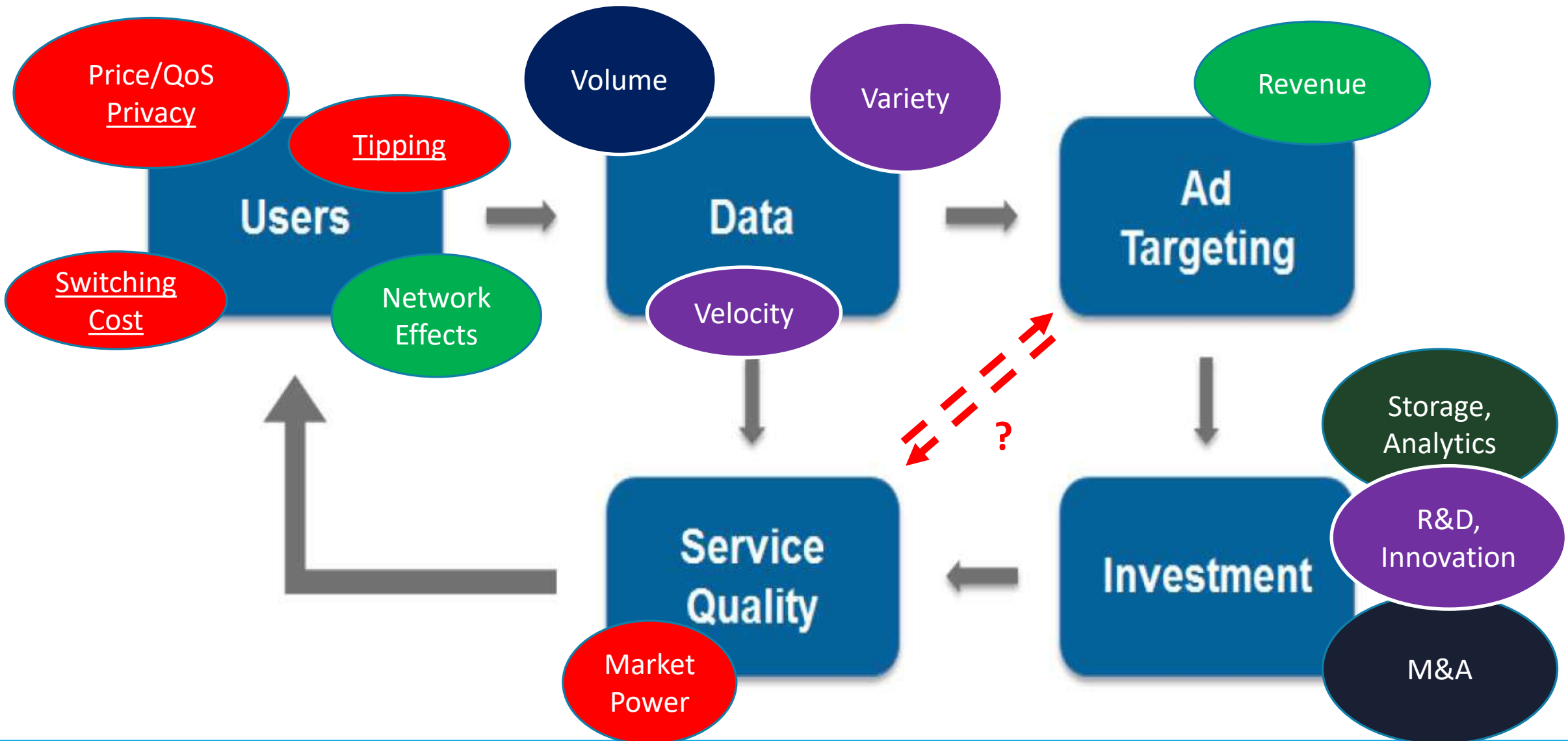


Big Data: Competition Issues

- *Free services are used to acquire valuable personal data which is used for behavioural advertising.*
- *As long as market competitive can yield innovations that benefit consumers and the company.*
- *However, network effects and economies of scale/scope driven by Big Data can also confer market power and a durable competitive advantage*
- ***When scale is crucial, or when individual-level data are not portable, data may contribute to incumbent market power.***

Source: OECD 2016,2022

THE NOT SO SECRET SAUCE-FEEDBACK LOOP



Network Effects & Market Power

- Understanding has become more nuanced over time
- Nature of Platform:
 - What determines Consumer behaviour
 - Two sided Externalities harder to beat –Social Media vs. Netflix(content)
 - User Data Benefit-Search
 - Market Expansion benefit: Uber vs. Airbnb
- Switching costs and interoperability (iOS/Android)
- Incumbency Advantage & Erection of Entry Barriers

Data and Economies of Scope

THE ECOSYSTEM EFFECT

- LEVERAGING OF DATA IN ADJACENT MARKETS
- DAUNTING ENTRY BARRIER
- THROWN IN LACK OF INTEROPERABILITY & DATA PORTABILITY

= CUSTOMER LOCK IN

= INSURMOUNTABLE ENTRY BARRIERS:

- Google: Search Engine+ Social Media+ E-Mail+ Advertising+ Maps+ Devices+ Apps+ AppStore +iOS, iPhone, iPad, MacBook, Apple TV,+++
- Amazon: e-Commerce Platform+ Products+ Devices +Cloud Services+ Logistics+ E readers+ Audiobooks+ Audible+ Entertainment+++

Data and Economies of Scope

‘Whereas the distinction between market sectors, or between industries, used to be stable and meaningful, we see online platform firms appearing to be able to “glide” from market to market, as if, to them, the boundaries between markets were somehow porous or permeable. As digitalization enables the generation of data-driven complementarities across markets and across products and services, a better unit of analysis might be rather that of an ecosystem which can cut across markets or sectors.’

-EC Report



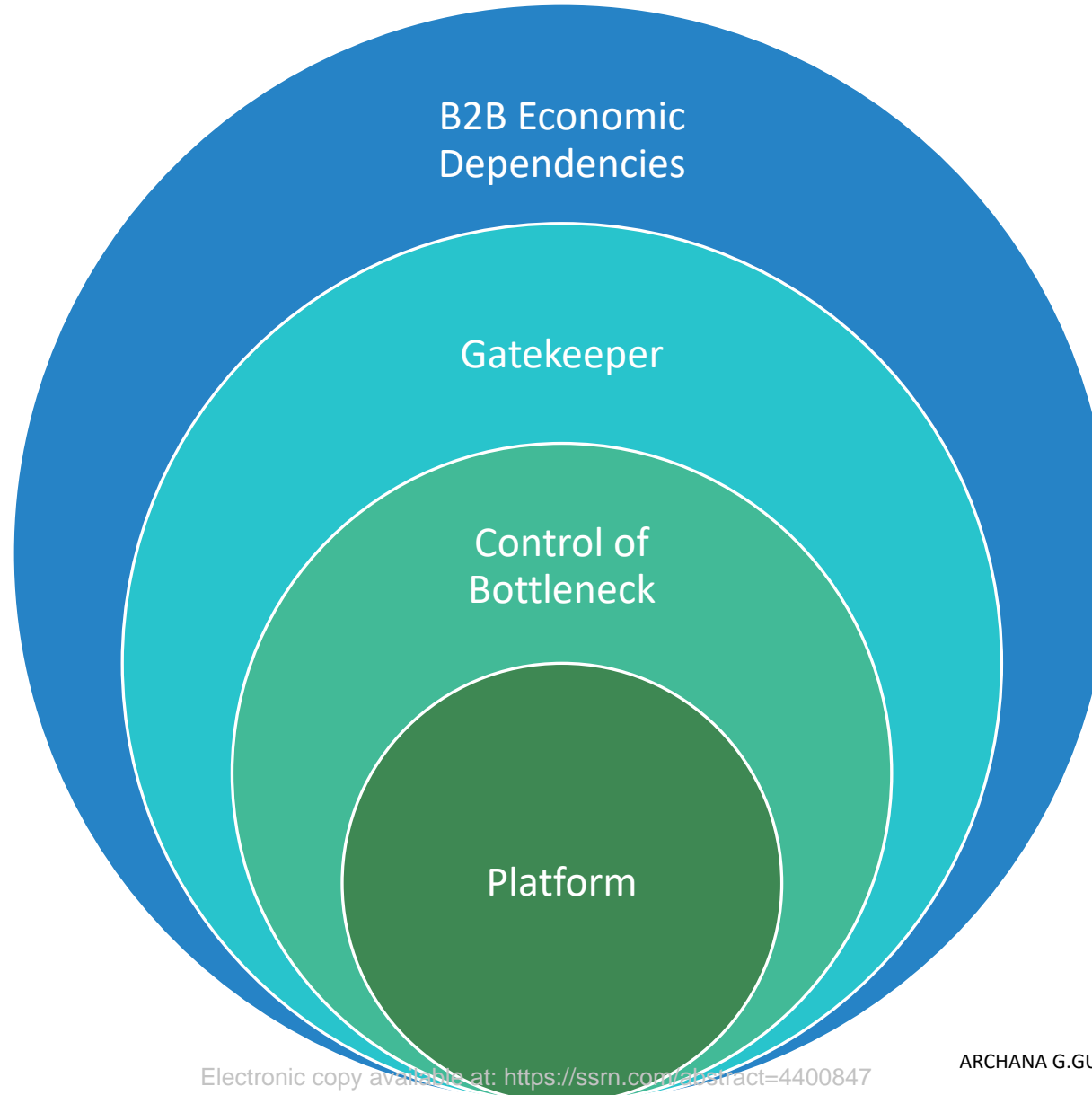
Big Data and Economies of Scope

- ‘Economies of scope, and the potential for market power stemming from data to be leveraged in new markets, have also been considered by the European Commission in recent merger decisions.
- For example, in the Google/Fitbit decision, the Commission noted the potential for Fitbit data to strengthen Google’s dominance in online search advertising, stating:
- *“...none of Google’s competitors in online advertising has access to a database or data collection capabilities equivalent to those of Fitbit and it is not likely that they would acquire such assets without incurring into significant costs and in timely manner.”*

Super Power By Any Other Name...

- **MARKET POWER RENAMED/RE-INVOKED**
- **Platform Power**
 - Intermediation Power
 - Bottleneck Power
 - Portfolio Power
 - **Significant Market Power**
 - Strategic Market Status
 - Paramount significance for competition across markets
 - Systematically Important Digital Intermediaries

EVOLUTION OF POWER



BAGSFUL OF TRICKS-I

BUSINESS STRATEGIES

Staying Ahead of Regulation 101

BY HOOK OR BY CROOK

SECRET SAUCE

LOBBYING POWER

- Vendors
- Publishers
- App Developers
- Advertisers
- Policy Makers
- Industry Associations
- Civil Society
- Multilateral organisations

Information Asymmetries

TRUST IN ME *ONLY I CAN KEEP YOU SAFE!*



Business

CCI order in Google case may have financial implications for local developers

IANIS | November 21, 2022 12:30 PM

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NEW DELHI: The recent order by the Competition Commission of India (CCI) in the Google case may appear developer friendly but in practice, it may have a practical and financial impact on the developers, especially the startups, legal experts said on Monday.

Big Tech Calls On EU Not To Regulate General Purpose Artificial Intelligence

By **CPI** - February 27, 2023



The European Union's push to regulate AI has faced intense corporate lobbying attempts at every stage of the policy-making process.

A **new report by Corporate Europe Observatory** reveals how Big Tech has been able to slowly pick the AI Act apart. To give just an idea of the scale of these ongoing lobbying efforts, our new report documents at least 565 meetings between MEPs and business interests on the AI Act.

In April 2021, EU commissioners Margarethe Vestager and Thierry Breton presented a proposal for a European legal framework on AI. It was celebrated as the first global attempt to regulate AI — a technology that, as the commission observed, would “have an enormous impact on the way people live and work in the coming decades.”

IT IS ALL IN THE PERSPECTIVE



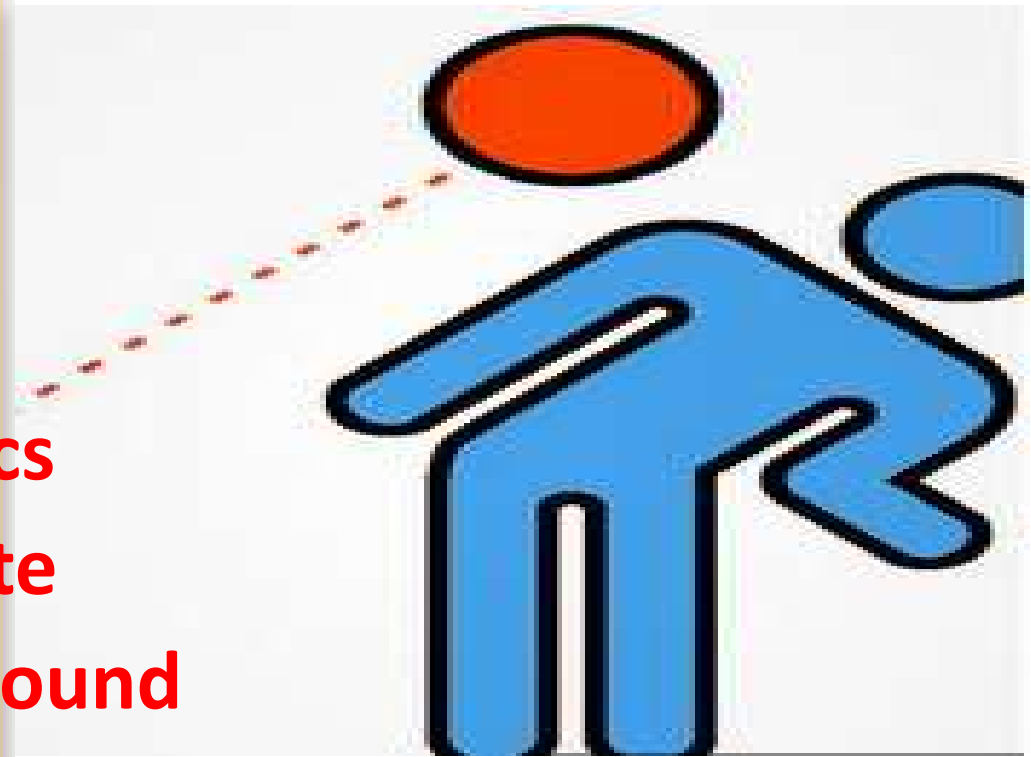
ISSUE		COMP. AUTHORITIES, POLICY MAKERS, REGULATORS	BIG TECH. COMPANY(IES), GATEKEEPERS, SIDI
PLAY STORE RULES		ANTI-INNOVATION, ANTI COMPETITION	PRO DEVELOPER, PRO CONSUMER
PLAY STORE FEES		ABUSE OF DOMINANCE NO MARKET DISCOVERY	JUSTIFIED, PRO DEVELOPER, CONSUMER SAFETY
BUNDLING	TYING	ABUSE OF DOMINANCE	CONSUMER CONVENIENCE
TARGETED ADS	PROFILING	PRIVACY/DISCRIMINATION/TOXIC ECHO CHAMBERS, POLARISATION	CONSUMER CONVENIENCE

DIVIDE & CONQUER

- **Jurisdiction:**

- Sector Regulation
- Privacy & Data Protection
- Consumer Protection

- **Nationalism & Geo Politics**
- **Litigate to Frustrate**
- **Assume Higher Moral Ground**



INFORMATION ASYMMETRIES

Delhi HC dismisses Facebook India's plea challenging CCI probe into WhatsApp's 2021 privacy policy

"With all due respect, you suddenly wake up now and challenge the order. Enough is enough. There has to be some end to luxury to litigate," the high court said and dismissed the plea.



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🖨️ | A+ A A-



Delhi HC dismisses Facebook India's plea challenging CCI probe into WhatsApp's 2021 privacy policy

"With all due respect, you suddenly wake up now and challenge the order. Enough is

WhatsApp had argued before the division bench of the high court that CCI cannot probe a policy which has now been kept in abeyance to await the fate of the Data Protection Bill and as well as the decision of the Supreme Court and the high court on issues concerning the legality of the privacy policy.

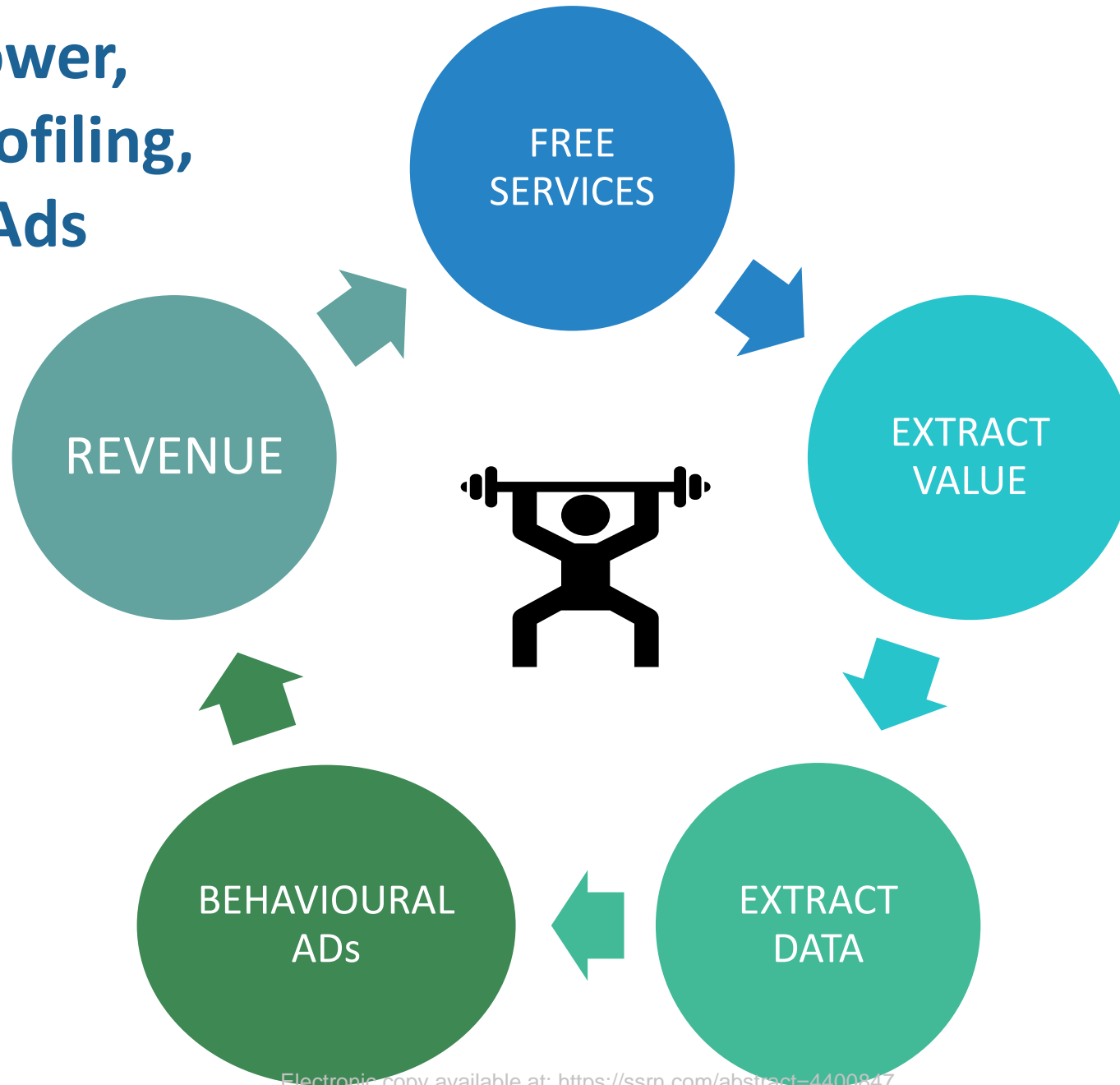


WE'RE TESTING NEW
DIGITAL AD FORMATS
THAT ARE HARDER
TO IGNORE.

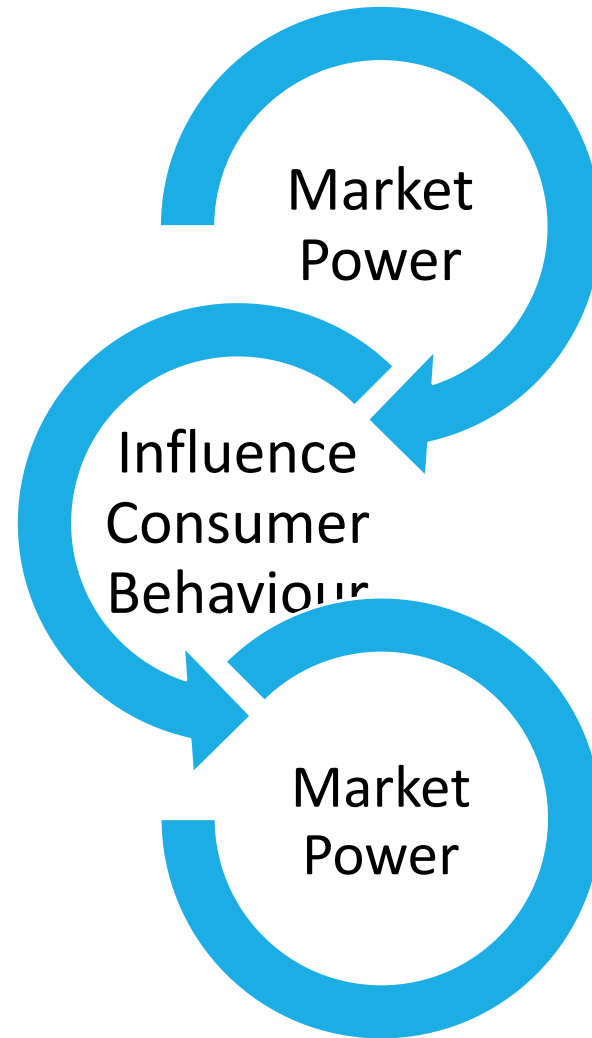


The Well Guarded Harmful Business Model

Unchecked Power, Unchecked Profiling, Personalised Ads



Unchecked Power, Unchecked Profiling, Personalised Ads



Harmful Business Model/Incentives

- Free services model heavily reliant on intrusive data collection and behavioural advertising on the supply side
- If subscription models tried, tax paid to Gatekeeper Platforms making it cost ineffective
- Privacy Paradox, Bounded Rationality, Default Inertia, Heuristics at play on the demand side
- Trend only gets worse with advancements in self-learning AI & lack of transparency & explicability

Harmful Business Model

-Content, Democracy & Inclusion

- Play on Negativity Bias to hook consumers
- Echo chambers, radicalisation & polarisation
- Targeted political advertising

Harmful Business Model-Impact on Innovation

- Innovation only to guard & preserve the flawed value chain
- Incentive to block alternatives-Acquire/Modify or Kill
- Innovation that profiles and predicts and nudges/manipulates you or presents you with choices exploiting your circumstances or personality
- Innovation aimed at fostering addiction

BAGFUL OF TRICKS II

INNOVATION & THE PLATFORM ECOSYSTEM

Mega Platforms: The Answer to Innovation?

Invest \$\$\$\$ in R&D, Start-ups.

Provide access to Funds, Toolkits

& Access to Customers



Is All Innovation Valuable to Society?

Extractive & Destructive of Value? Toxic?

- **Cyber-hacking**
- **Cyber bullying**
- **Disinformation**
- **Echo chambers**
- **Addiction**

What about?

- **Democracy**
- **Human Autonomy, Agency**

Mega Platforms: The Answer to Innovation?

Characteristics	Mega Platform/Tech Baron&Innovation	Innovator (Pirate) & Innovation
Innovator type	Large, Bureaucratic, Slow	Nimble, Small, Quick Decision making
Innovation focus	Preserve Customers, Retain Value: Improve Existing Products and Services	Acquire customers: Create 'New Value Proposition; Novel /Niche products & Services
Innovation Type	Complementary, Avoid Cannibalisation, Disrupt Outside Ecosystem	Replacement/Disruptive Disrupt Ecosystem/Components
Example	Behavioural Advertisement value chain is key	New Model perhaps focused on privacy as a selling point
Ezrachi & Stucke, 2022	Electronic copy available at: https://ssrn.com/abstract=4400847	

All are Welcome On Board.....Only If



Harmful Business Model-Impact on Innovation

- You can avoid a platform but not an Ecosystem.
 - Think GAFAM
- Data also means advance information facilitating the constant vigil for threats
- Buy, Lend, Steal or Send into oblivion
- Control interoperability
- Set all the rules and manage the Gate-Tolls, or No Entry
- You can't beat us so join us on our terms



How to **Block** the Threat of Competition through **Disruptive** Innovation, 101



**Pay Toll, Conform to,
Complement , Join
The ECOSYSTEM**

Or Else..

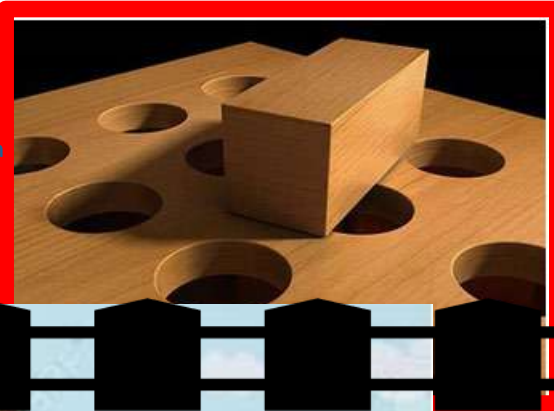


My Parks are Your Best Bet



You can Disrupt, but **Not** in my Park!

or on my watch



**NO
COMPETITION
PLEASE**



**PAY TOLL,
CONFORM,
COMPLEMENT**



Regulatory Antidotes

DOES THE CURE WORK?

1.



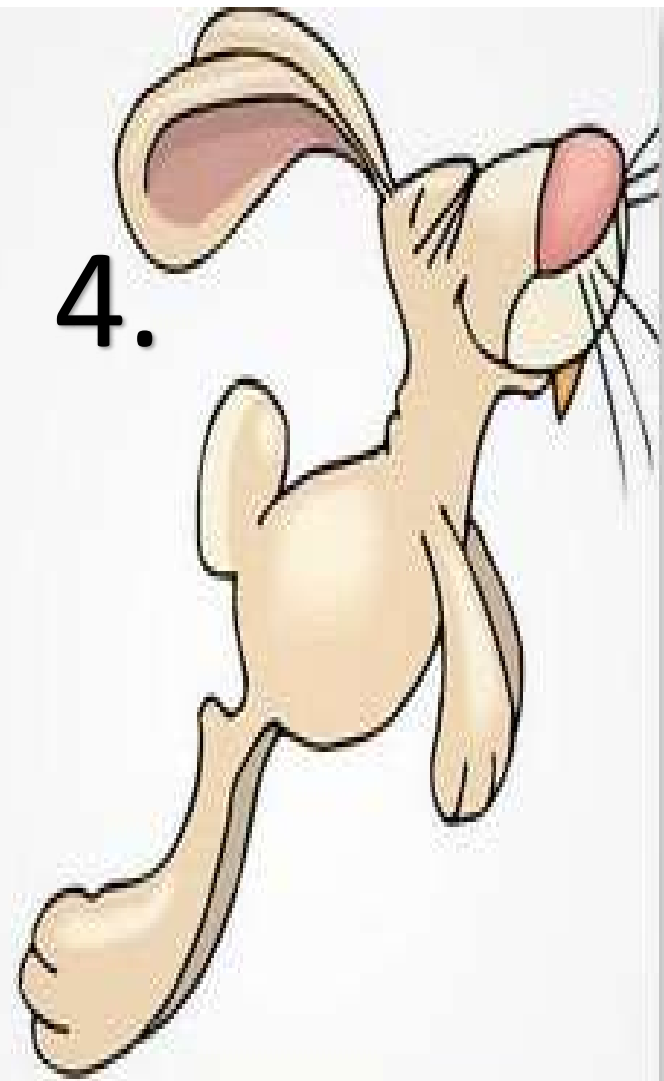
2.



3.



4.



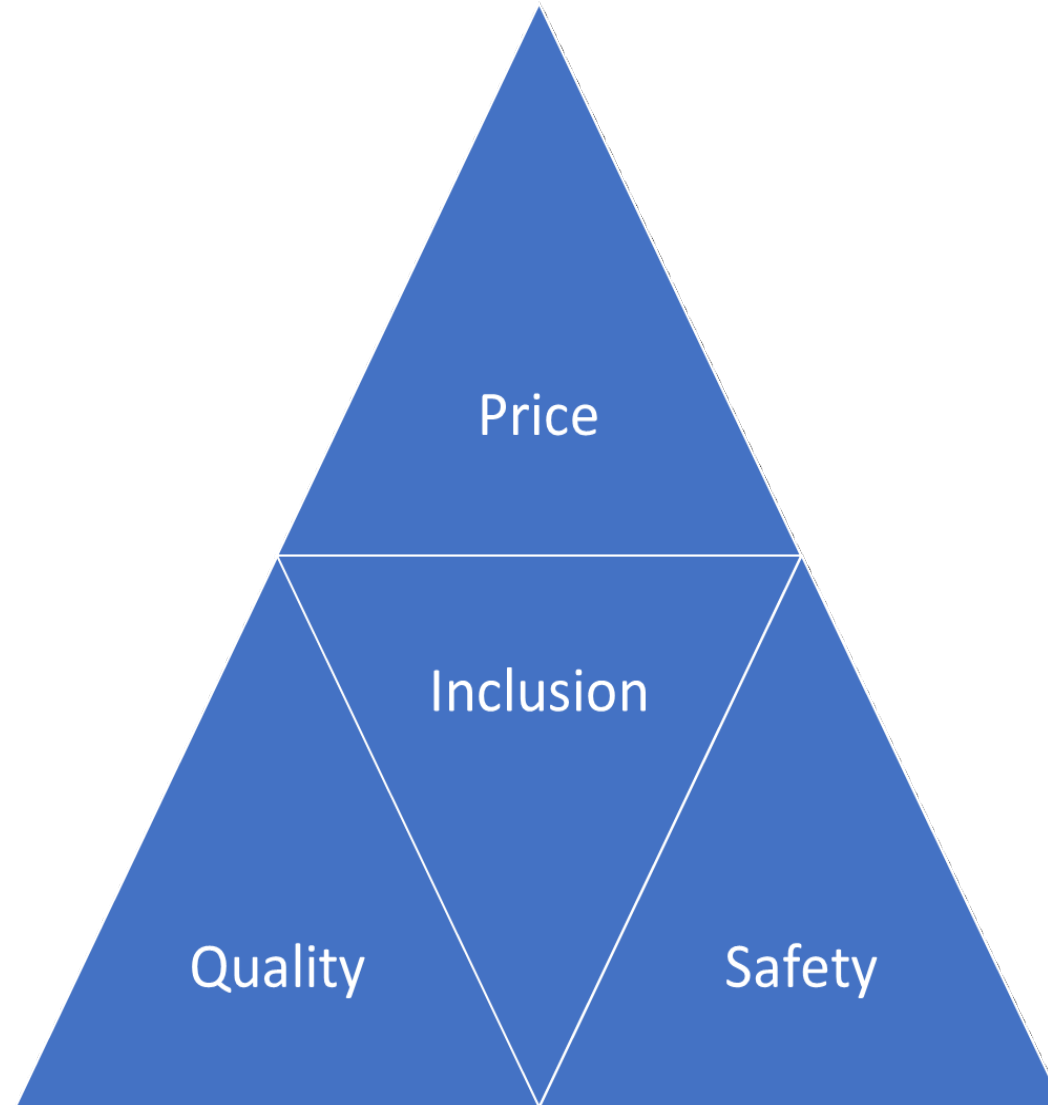
COMPETITION POLICY CONCERNS

PROTECT INNOVATIVENESS

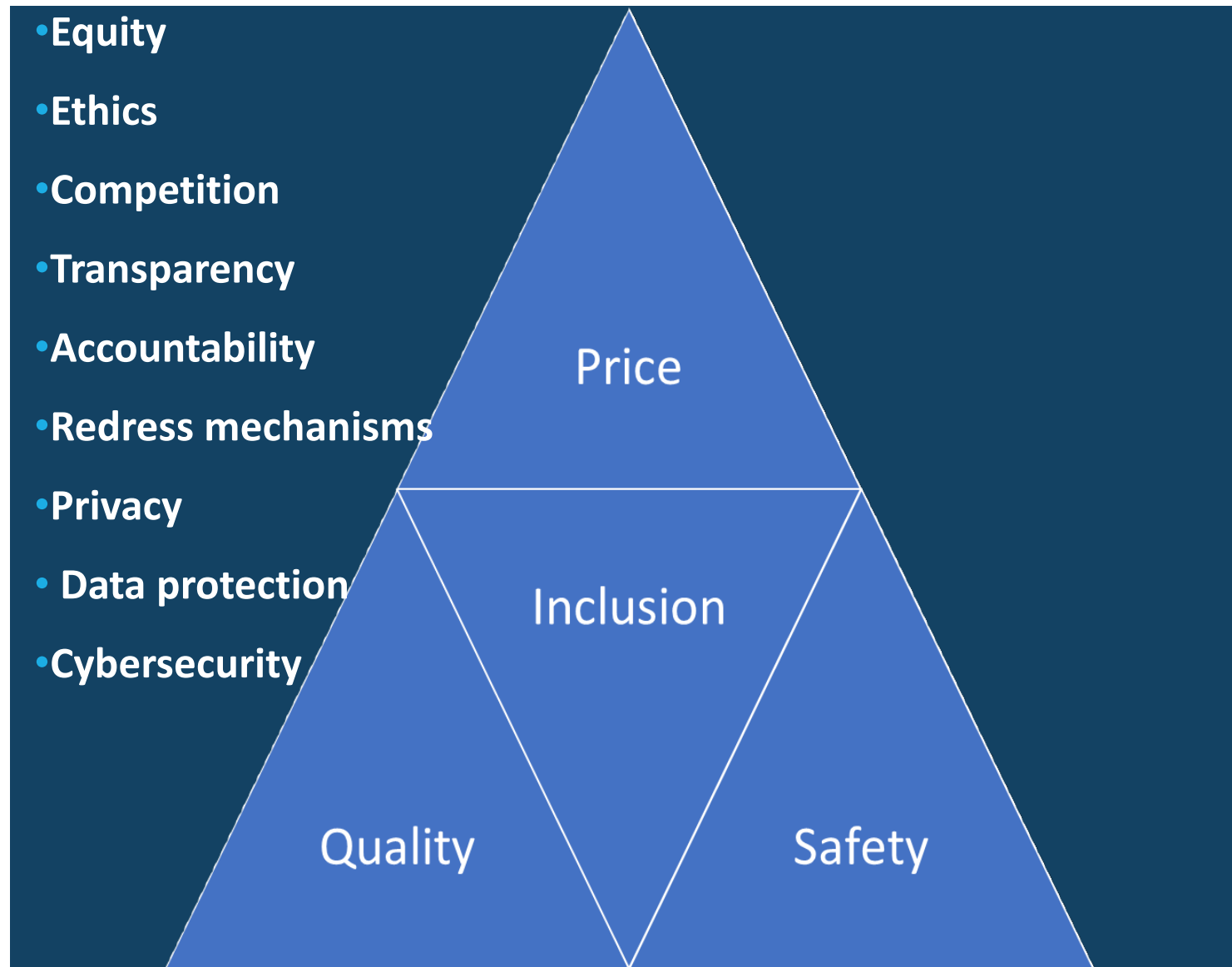
ENSURING PLATFORM POWER IS NOT USED FOR:

- Keeping potential competitors from entering the market.
- Anti-Competitive leveraging of market power into adjacent markets
- Preventing competitors from gaining access to essential information, data or resources for anticompetitive reasons,
- Eliminating competition through acquisitions
- *These actions stifle competition & innovation by making entry more difficult and costly, increasing the probability of failure and therefore lowering expected return for new entrants*

CONSUMER PROTECTION



CONSUMER PROTECTION IN THE DIGITAL AGE

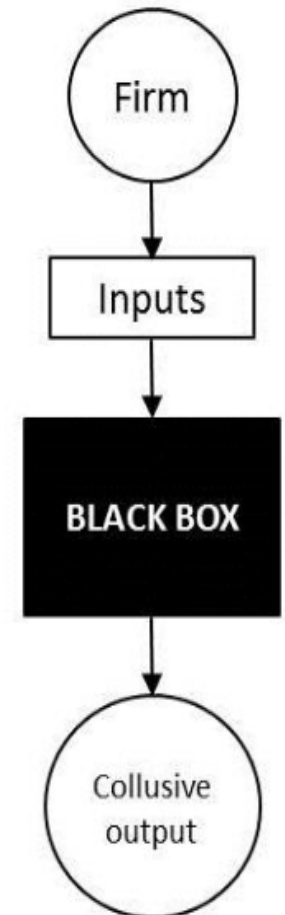


AWARENESS OF CONSUMER HARMS

FROM TENTATIVE TO CONVINCED

Big Data, Algorithms & Price

- Big Data and AI, price availability and transparency on the internet can facilitate market coordination.
- Hard to prove especially in case of algorithms designed by third parties-
- If these undetectable cartels harms consumers, sector regulators may have to step in



OECD 2014,, 2017

Big Data & Price Discrimination

- *Sellers can use Big Data to target consumers with the right “emotional pitch” to increase overall consumption*
- *As more online retailers personalise pricing and product offerings, it will be **harder for consumers to discover a general market price** and to assess their outside options, thus implying that behavioural discrimination becomes more durable*

Source: Ezrachi & Stucle

Big Data & Price Discrimination

- *‘Once consumers accept that prices change rapidly (such as airfare, hotels, etc.), they have lower expectations of price uniformity among competitors. One hotel may be charging a higher price because of its supply of rooms (rather than discriminating against that particular user). (...) Thus, **we may not know when pricing is dynamic, discriminatory, or both.**’-’Ezraichi & Stucke*

Source: *Ezraichi & Stucke, Emphasis added

Big Data & Price Discrimination

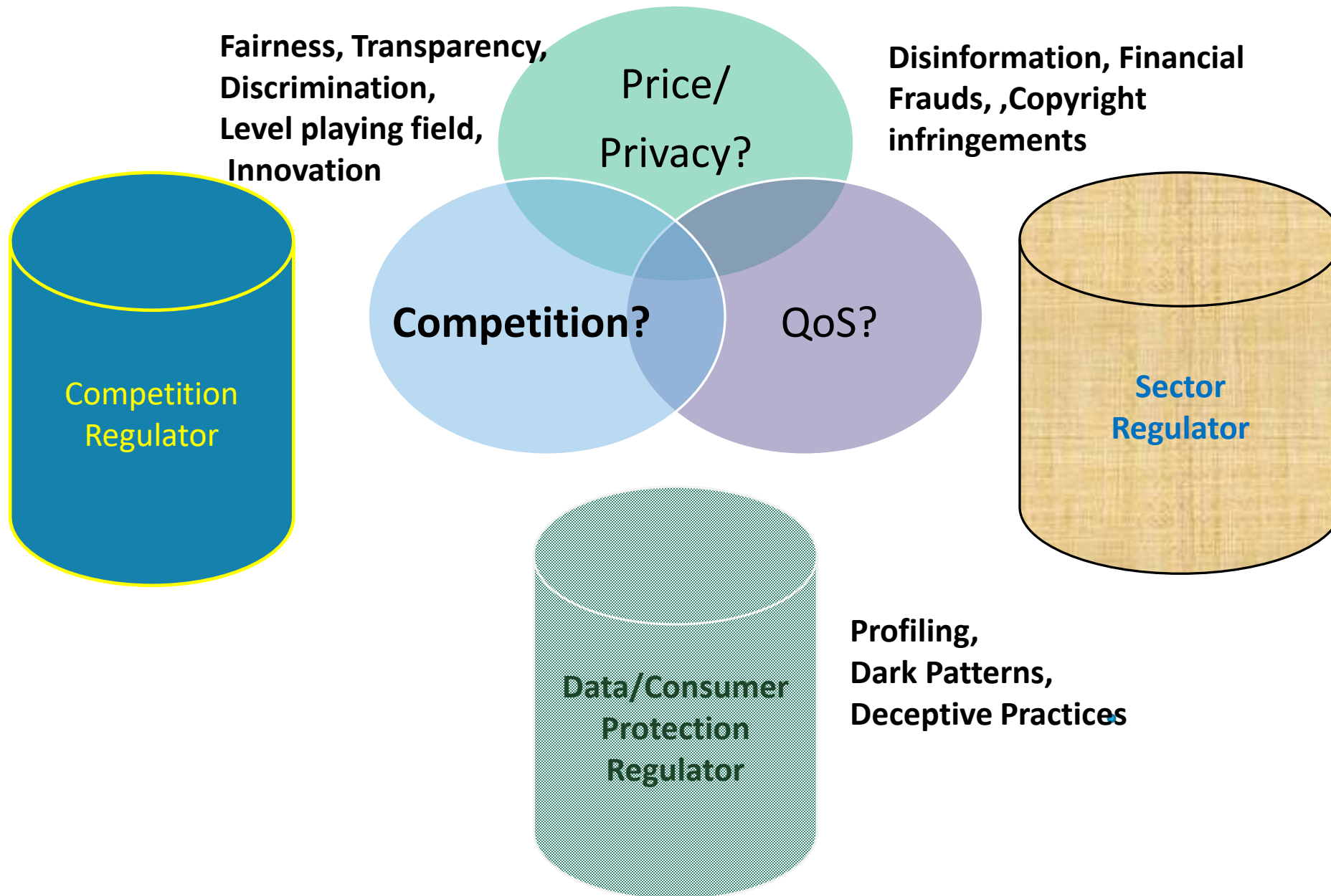
- *As more consumers rely (and trust) an intermediary to deliver the best results [search query/ goods/services], the less interested they become in multi-homing... And: many users who indicated that when a search result fails to meet their expectations they will “try to change the search query—not the search engine.”*



Source: Ezrachi & Stucke, Emphasis Supplied

Pervasive Power & Harms

‘The potential harms from data-opolies can exceed those of earlier monopolies. They can affect not only our wallets but our privacy, autonomy, democracy, and well-being. One should therefore think hard before resorting to the familiar mantra that antitrust can often do more harm than good, as markets do a better job self-correcting.’-Stucke & Ezrachi



Regulatory Catch up

COMPETITION & PRIVACY

Replace/Supplement Competition Regulator's Tool Kit

- Competition law has been excessively narrowed, and excessively influenced by presumptions concerning a competitive market place
- Today, competition and consumer protection law needs to be broadened, to incorporate the realities of the 21st century and the insights of modern economics

-Joseph Stiglitz



Market Power & Privacy-Competition Regulator

If privacy violations occurs through use of market power, is it an antitrust concern?

- *If Data: 'new currency of the internet' then, is increased private data collection a price increase?*
- *Or, if privacy is 'a desirable characteristic', is 'a reduction in privacy' a decrease in quality of the service*
- *Lack of competition can lead to lack of incentive to improve quality (in terms privacy)*

NOW A SETTLED ISSUE?

Antitrust is actually about consumer choice, and price is only one type of choice. *The ultimate purpose of the antitrust laws is to help ensure that the free market will bring to consumers everything they want from competition. This starts with competitive prices, of course, but consumers also want an optimal level of variety, innovation, quality, and other forms of non-price competition. Including privacy protection.*

-OECD

CCI-Then

- The Competition Commission of India in *Vinod Gupta v. WhatsApp* (Case No.99 of 2016) on allegations of predatory pricing, abuse of dominance & privacy concerns post FB/WhatsApp merger
- In market for instant messaging services using consumer communication apps through smartphones in India, WhatsApp is dominant
- Did not find evidence of predatory pricing or abuse of dominance
 - **Many other free apps in market**
 - **Switching costs are low**
 - **Multi-homing is prevalent**
 - **User has to give consent for data sharing**
 - **Entry barriers are low**
 - **(Opt-out option)**

CCI-Now (Suo Moto Case No.1/2021)

- **Mandatory sharing of Users Personal Data by WhatsApp with Facebook Companies**
- **No More Opt-Out option**
- **‘Unduly Expansive and Disproportionate Data Collection.**
- *‘This is borne from the fact that it seeks to capture, amongst others, transactions and payments data; data related to battery level, signal strength, app version, mobile operator, ISP, language and time zone, device operation information, service related information and identifiers etc.; location information of the user even if the user does not use location related features besides sharing information with Facebook on how user interacts with others (including businesses) when using WhatsApp services.’*

CCI-Now*

- *‘Users own ‘their personalised data, are entitled to be informed about the extent, scope and precise purpose of sharing of such data by WhatsApp with other Facebook Companies.*
- *‘Privacy Policy as well as Terms of Service are too broad, vague and unintelligible.’*
- *‘Intention to build ‘user profiles through cross-linking of data collected across services. Such data concentration may itself raise competition concerns where it is perceived as a competitive advantage.’*
- *‘The impugned conduct of data-sharing by WhatsApp with Facebook apparently amounts to degradation of non-price parameters of competition viz. quality which result in objective detriment to consumers, without any acceptable justification.*
- *Such conduct prima facie amounts to imposition of unfair terms and conditions upon the users of WhatsApp messaging app, in violation of the provisions of Section 4(2)(a)(i) of the Act.’*

S.4(2)(a)(i) of the Indian Competition Act

Prohibition of abuse of dominant position

Abuse of dominant position

4. ³[(1) No enterprise or group shall abuse its dominant position.]
- (2) There shall be an abuse of dominant position ⁴ [under sub-section (1), if an enterprise or a group].—
- (a) directly or indirectly, imposes unfair or discriminatory—
- (i) condition in purchase or sale of goods or service; or
 - (ii) price in purchase or sale (including predatory price) of goods or service.

A Rose by Any Other name Consumer Protection

FTC PENALTY ON FACEBOOK

FTC Settlement Case



FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

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For Release

FTC Imposes \$5 Billion Penalty and Sweeping New Privacy Restrictions on Facebook

FTC settlement imposes historic penalty, and significant requirements to boost accountability and transparency

FTC Settlement Case

“Despite repeated promises to its billions of users worldwide that they could control how their personal information is shared, Facebook undermined consumers’ choices,” said FTC Chairman Joe Simons. “The magnitude of the \$5 billion penalty and sweeping conduct relief are unprecedented in the history of the FTC. The relief is designed not only to punish future violations but, more importantly, to change Facebook’s entire privacy culture to decrease the likelihood of continued violations. The Commission takes consumer privacy seriously, and will enforce FTC orders to the fullest extent of the law.”

Federal Trade Commission Act

Section 5: Unfair or Deceptive Acts or Practices

Unfair Practices

An act or practice is unfair where it • causes or is likely to cause substantial injury to consumers;

- cannot be reasonably avoided by consumers; and
- is not outweighed by countervailing benefits to consumers or to competition.

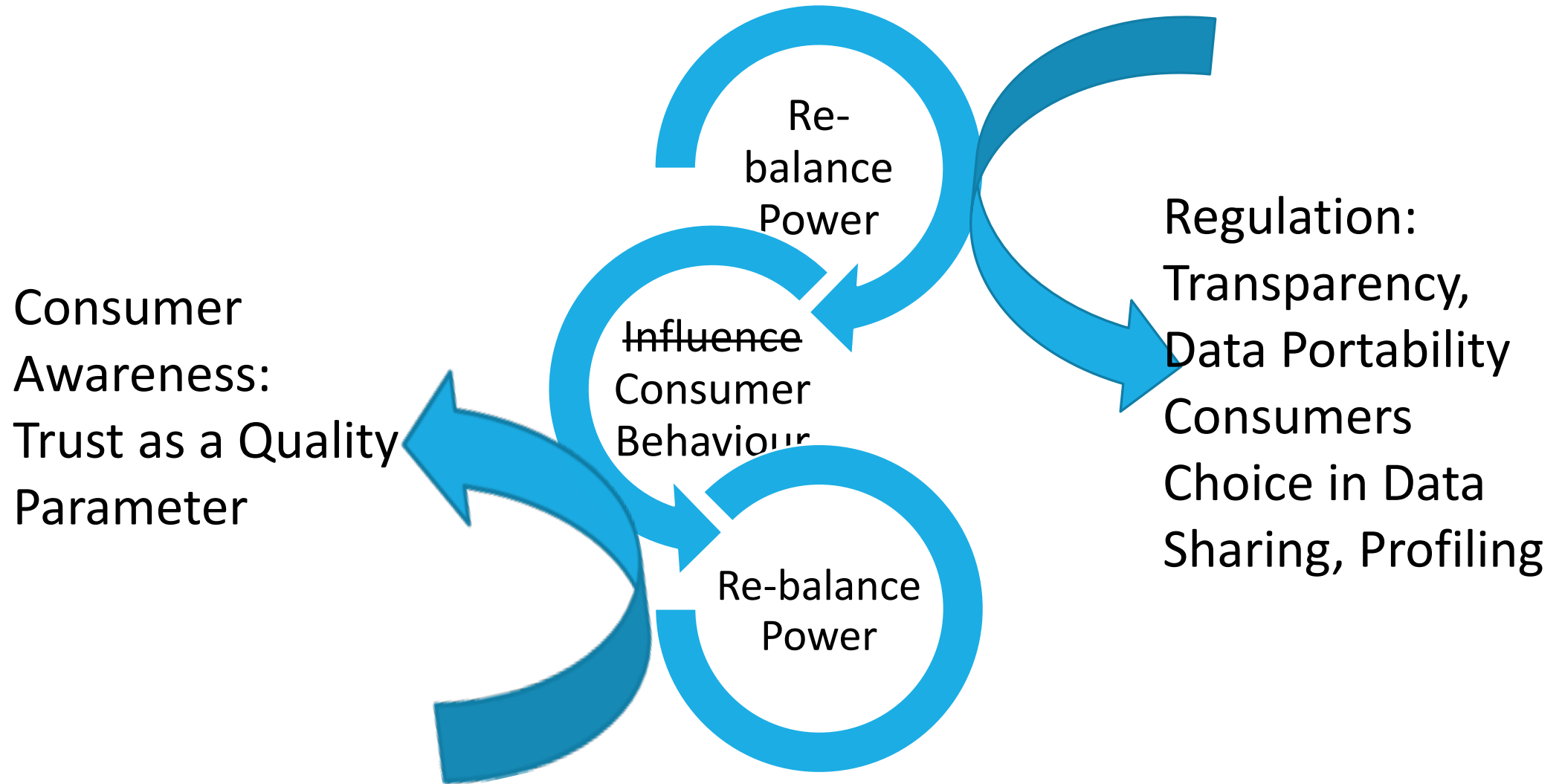
Public policy, as established by statute, regulation, or judicial decisions may be considered with all other evidence in determining whether an act or practice is unfair.

Deceptive Practices

An act or practice is deceptive where • a representation, omission, or practice misleads or is likely to mislead the consumer;

- a consumer's interpretation of the representation, omission, or practice is considered reasonable under the circumstances; and
- the misleading representation, omission, or practice is material.

Rebalancing Bargaining Power



The Competition Act (Amendment) Bill, 2022/2023

- **The Bill proposes the introduction of an additional “deal value” threshold**, so that transactions: (a) with a deal value in excess of INR 2,000 crore (approx. USD 252 million); and (b) where either party [party being acquired] has “substantial business operations in India”, will require to be notified in India (assuming no exemption is available). The Bill further provides that the CCI shall issue regulations to prescribe the requirements for assessing whether an enterprise has “substantial business operations in India”, to adapt to changing circumstances as well as different categories of transactions it may wish to capture.
- **Introduction of a Settlements and Commitments mechanism**, allowing parties to apply to the CCI to settle / make commitments in cases of anti-competitive vertical agreements and abuse of dominance cases.
- **Anti-competitive horizontal agreements involving entities which are not engaged in identical or similar trade** [where it is proved that such person intended to actively participate] **will also be caught under the Competition Act**

Call for *Ex Ante* Rules

TOO LITTLE(MUCH), TOO LATE(SOON?)

FDI Rules, 2018

**Government of India
Ministry of Commerce & Industry
Department of Industrial Policy & Promotion**

Press Note No. 2 (2018 Series)

Subject: Review of the policy on Foreign Direct Investment (FDI) in e-commerce

1.0 In order to provide clarity to FDI policy on e-commerce sector, Para 5.2.15.2 of the Consolidated FDI Policy Circular 2017 will now read as under:

FDI Rules, 2018

- ix) E-commerce entities providing marketplace will not directly or indirectly influence the sale price of goods or services and shall maintain level playing field. Services should be provided by e-commerce marketplace entity or other entities in which e-commerce marketplace entity has direct or indirect equity participation or common control, to vendors on the platform at arm's length and in a fair and non-discriminatory manner. Such services will include but not limited to fulfilment, logistics, warehousing, advertisement/ marketing, payments, financing etc. Cash back provided by group companies of marketplace entity to buyers shall be fair and non-discriminatory. For the purposes of this clause, provision of services to any vendor on such terms which are not made available to other vendors in similar circumstances will be deemed unfair and discriminatory.

FDI Rules, 2019

- The rules bar now any entity in which an e-commerce firm or its group companies have a stake from selling on their online platform.
- The new rules state that the inventory of a seller or vendor will be seen as being controlled by a marketplace if the vendor purchases more than 25 percent of its inventory from the marketplace, or any of its group firms.
- The new regulation replaces a rule that said an e-commerce firm could not permit one vendor's retail sales to overshoot 25 percent of the overall sales of the marketplace by value in a fiscal year.
- The rules now bar any entity in which an e-commerce firm or its group companies have a stake from selling on their online platform.

CONSUMER PROTECTION E-COMMERCE RULES 2020

(11) No e-commerce entity shall--

- (a) manipulate the price of the goods or services offered on its platform in such a manner as to gain unreasonable profit by imposing on consumers any unjustified price having regard to the prevailing market conditions, the essential nature of the good or service, any extraordinary circumstances under which the good or service is offered, and any other relevant consideration in determining whether the price charged is justified;
- (b) discriminate between consumers of the same class or make any arbitrary classification of consumers affecting their rights under the Act.

**STANDING COMMITTEE ON FINANCE
(2022-2023)**

SEVENTEENTH LOK SABHA

MINISTRY OF CORPORATE AFFAIRS

ANTI-COMPETITIVE PRACTICES BY BIG TECH COMPANIES

FIFTY THIRD REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

DECEMBER, 2022/ PAUSHA, 1944 (SAKA)

Anti-Steering Provisions: App stores prevent app developers from offering modes of payment to end-users other than the ones provided by the app store.

Self Preferencing: Platforms perform dual roles, i.e., of a marketplace and also of a seller listing their products or services on the platform.

Bundling and Tying: The use of the platform's core service is conditioned on the purchase of another subsidiary service.

Data Usage: Market leaders amass a hoard of personal data over time, leading to tracking, profiling and leveraging of data to strengthen their position in the primary and allied markets.

Killer acquisitions: Large firms buy startups, with the intention to disallow them from growing, without being subjected to merger control scrutiny.

Pricing /Deep Discounting: Platforms offer huge discounts and often below-cost pricing in a non-transparent manner. Resultantly, the ability of sellers to decide prices and make profits is impaired.

Exclusive Tie-ups: Platforms enter into agreements with brands to sell the latter's products exclusively on the platform.

Search and Ranking Preferencing: Digital companies rank certain results higher on the results page, due to bias in favour of sponsored results or self-fulfilled products.

Third-party Applications: Users are restricted from the installation and effective use of third-party applications.

Advertising Policies: Companies engage in the consolidation of the digital advertising supply chain, leading to market concentration, self-preferencing and conflict of interest.

Parliamentary Committee, on Exclusionary Conduct :

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.

Parliamentary Committee on Data:

Data: *‘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 thirdparty 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.’*

Parliamentary Committee on Data:

- **Anti-Steering:** *‘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:** *‘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.’*
- **Tying & Bundling:** *‘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.’*

Parliamentary Committee on *Ex Ante* Regulation:

- *‘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.’*

CONTENT REGULATION

- Self Regulation
 - Culture? Local Context? Legitimacy?
 - Delegation of State's responsibility?
- Co-Regulation has not yielded results
- Co-Opt: State lays down goals and means?
 - Dispute Resolution Mechanisms
 - But where is the law on what is harmful?
 - Expect Court Challenges

Digital India Act- A Preview

Big Tech is often gaming the System

The New York Times

U.S. Accuses Google of Abusing Monopoly in Ad Technology

The Justice Department's antitrust lawsuit, which a group of states joined, was the fifth by U.S. officials against the company since 2020.

Bloomberg

Google Found to Unfairly Block Rival Payments on India Store

- The antitrust watchdog says practices are discriminatory
- Google is grappling with a backlash at home and abroad

Financial Times

Big Tech attacks tough EU measures aimed at tackling its market power

Apple and Google criticise newly unveiled Digital Markets Act that will force a radical overhaul of their global operations

Fortune

TECH - NET NEUTRALITY

Netflix, Meta and other U.S. internet companies could be forced to pay to reach users in Europe. Here's why a new net neutrality fight is erupting.

INET

Big Tech: Not Only Market But Also Knowledge and Information Gatekeepers

Digital India Act- A Preview

Open Internet

(1/2)

- An Open Internet should have
 - (a) **Choice;**
 - (b) **Competition;**
 - (c) **Online diversity**
 - (d) **Fair market access, and**
 - (e) **Ease of Doing Business and Ease of Compliance for Startups**
- **Fair trade practices**, prevention of concentration of market power and gatekeeping, distortions through regulation of dominant Ad-tech platforms, App stores etc., promoting start-up India via **non-discriminatory** access to digital services and **interoperable platforms**.
- **Safeguard innovation** to enable emerging technologies like AI/ML, Web 3.0, Autonomous systems/ Robotics, IoT/ Distributed Ledger/ Blockchain, Quantum Computing, Virtual Reality/Augmented Reality, Real-time language translators, Natural-language processing, etc.
- **Promotion of Digital Governance** ease access to government & other public utility services, **delivery of public services through online and mobile platforms** in a simple, accessible, interoperable and citizen friendly manner.
- May need to update provisions in the **Competition Act, 2002**

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Digital India Act- A Preview

Online Safety and Trust

(2/5)

- **Definition and Regulation of hi-risk AI systems** through legal, institutional quality testing framework to examine regulatory models, algorithmic accountability, zero-day threat & vulnerability assessment, examine AI based ad-targeting, content moderation etc.
- **Privacy invasive devices** such as **spy camera glasses, wearable tech** should be mandated under stringent regulation before market entry with strict **KYC requirements** for retail sales with appropriate criminal law sanctions.
- **Secure Cyberspace** by empowering agencies like CERT-In for cyber resilience; strengthening the penalty framework for non-compliance, advisories on the information & data security practices, etc.
- **Content Monetisation Rules** for platform-generated and user-generated content

Digital India Act- A Preview

Accountable Internet

(1/2)

- **Adjudicatory and Appellate Mechanisms** for accountable and responsive digital operators; **updated intermediary framework**; Obligations on significant digital operators through classification/ mandates; **Algorithmic transparency** and **periodic risk assessments** by digital entities
- **Accountability** for upholding **Constitutional rights** of the citizens, esp. **Article 14, 19 & 21**; **Ethical use of AI based tools** to protect rights or choices of users; **Provision of deterrent**, effective, proportionate and dissuasive penalties, etc.
- **Whole-of-Government Response** for a unified, coordinated, efficient and responsive governance architecture including an effective appropriate government structure, a **dedicated inquiry agency** and a **specialised Dispute resolution/ adjudication framework**.
- **Disclosure Norms** for data collected by Data Intermediaries, collecting data above a certain threshold.
- **Standards for ownership** of anonymized personal data collected by Data Intermediaries

Digital India Act- A Preview

Accountable Internet

(2/2)

Need for Responsible and Ethical Use of Online Technologies

The Forbes

Deepfakes – The Danger Of Artificial Intelligence That We Will Learn To Manage Better

Sep 8, 2022

....more widespread abuse is expected with more widespread availability.

FTC Press Release

FTC Report Warns About Using Artificial Intelligence to Combat Online Problems

Agency Concerned with AI Harms Such As Inaccuracy, Bias, Discrimination, and Commercial Surveillance Creep

The New York Times

Alarmed by A.I. Chatbots, Universities Start Revamping How They Teach

With the rise of the popular new chatbot ChatGPT, colleges are restructuring some courses and taking preventive measures.

The Washington Post
March 2023

‘Noah’ and ‘Daren’ report good news about Venezuela. They’re deepfakes.

The avatars are the latest tool in Venezuela’s disinformation campaign, experts say

The New York Times

Supreme Court Seems Wary of Limiting Protections for Social Media Platforms

The case, concerning a law that gives websites immunity for suits based on their users’ posts, has the potential to alter the very structure of the internet.

World Economic Forum

Is blockchain really secure? Here are four pressing cyber threats you must consider

Feb 21, 2023

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Digital India Act- A Preview

Intermediaries

Different types of intermediaries



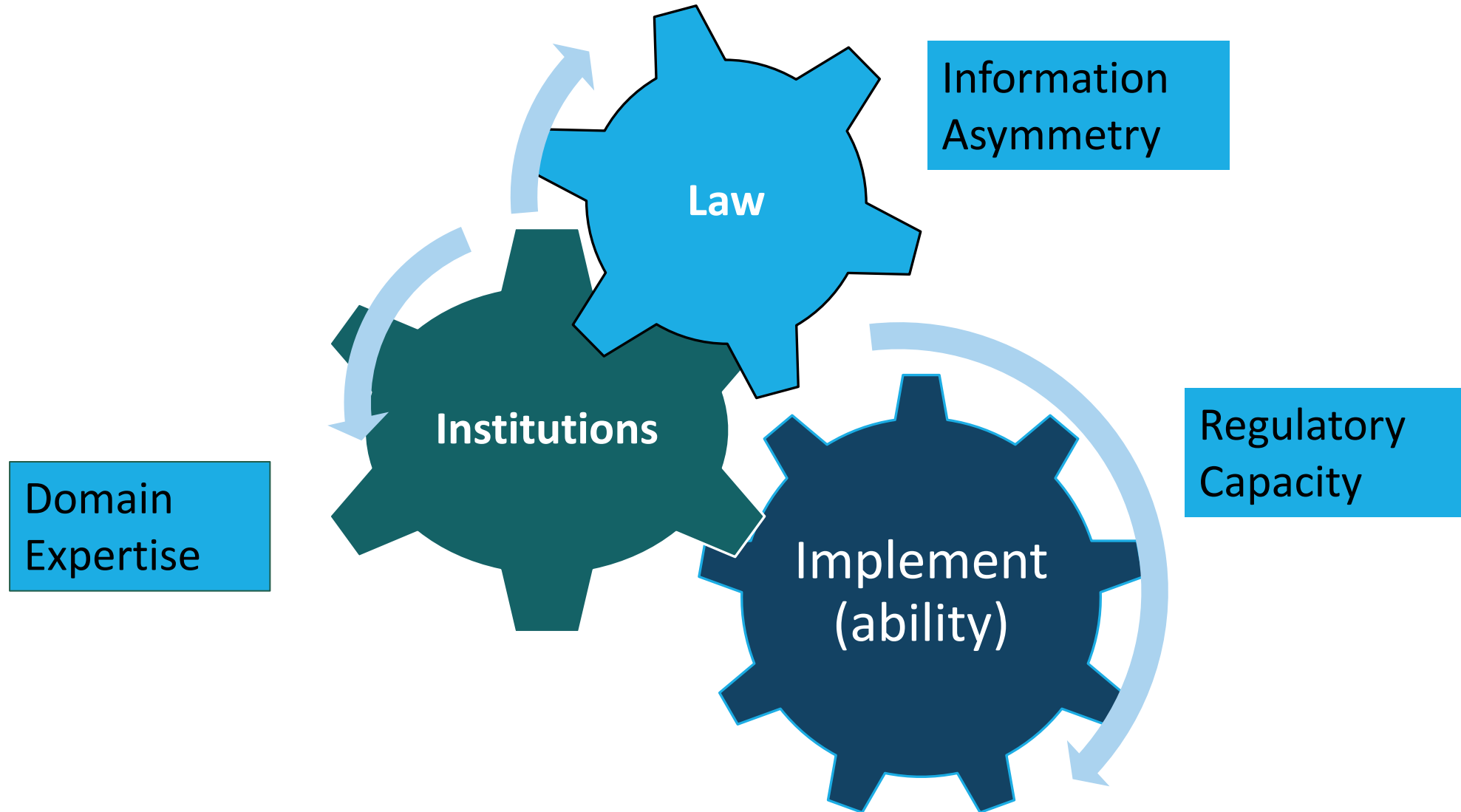
Need for separate rules for each class of intermediaries

Should there be “Safe Harbour” at all for intermediaries?

IS OMNIBUS REGULATION THE ANSWER?

FOR EVERY CONTEXT?

EFFECTIVE REGULATION



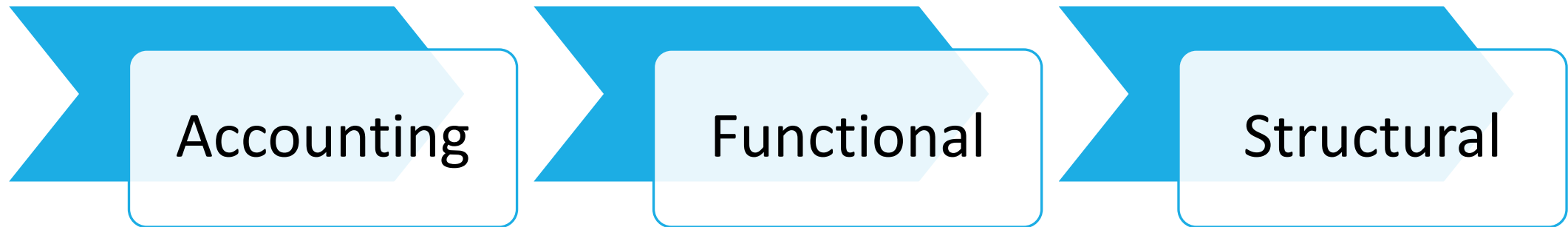
REGULATORY Models

- Ignore and Risk monopolies
- Over Prescribe & Chill Innovation
- Co-Regulation seems to have failed
- Co-opt, Monitor & Sanction

SMP Type Regulation: PROs & CONs

- **Institutional Capacity?**
- **Regulatory Bandwidth?**
- **Omnibus Regulation Vs. Collaboration & Harmonisation**
- **Impact on incentives to grow?**
- **Is There Another Way?**

Divide & Conquer- Separation?



Final Thoughts

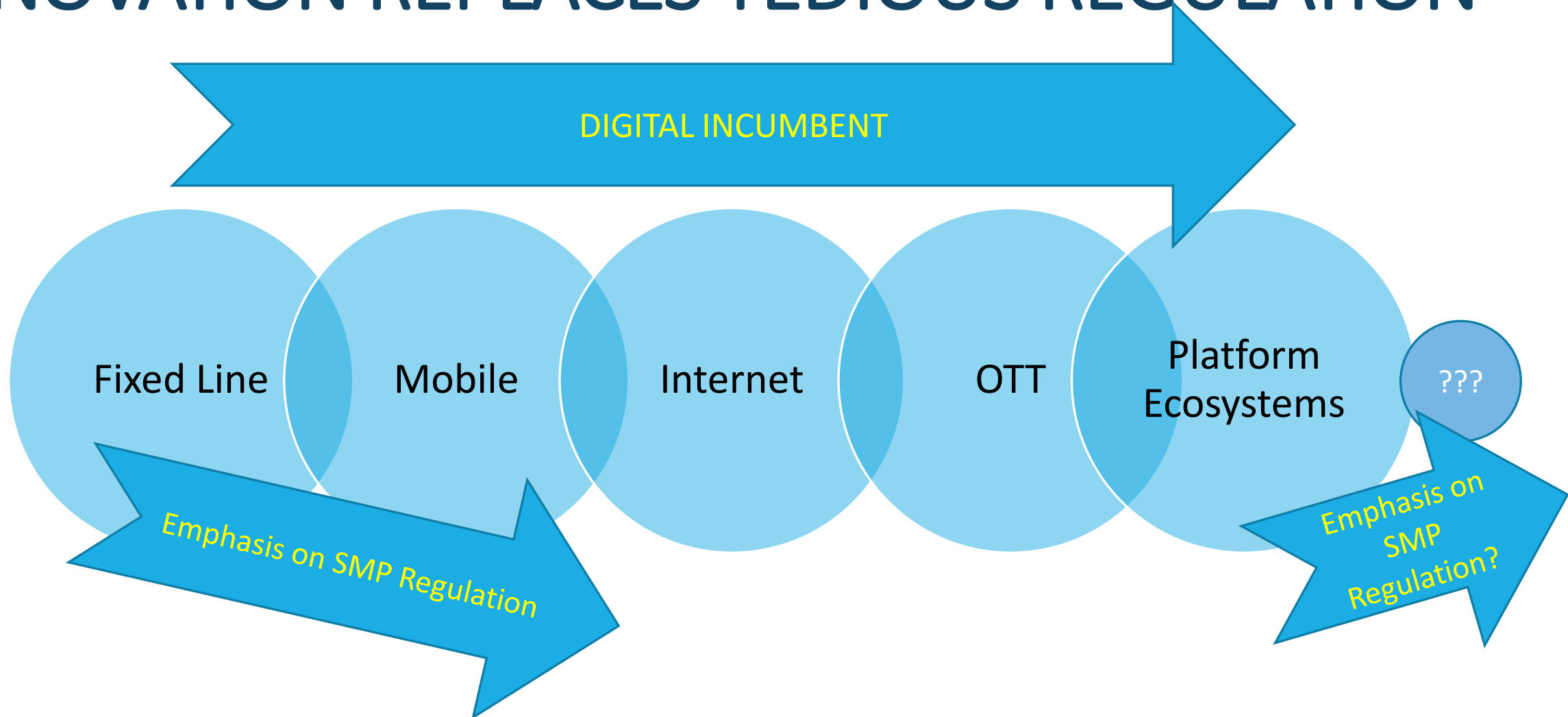
COMPETITION INNOVATION & DEMOCRACY-THE FULL CIRCLE

The One Thing that Matters

INNOVATION



INNOVATION REPLACES TEDIOUS REGULATION



FULL CIRCLE

THE IMPORTANCE OF COMPETITION POLICY

The Importance of Competition Policy

‘Democracy requires markets. Markets do not require democracy. This is because markets have two functions: service to democracy (rights) and service to economic efficiency. Thus, in a society that has adopted a democratic form of government, markets do double duty. They produce the tight and virtuous fit between safeguarding civil liberties and economic liberties, on the one hand, and meeting people’s needs and building the nation’s economic standing in the world, on the other.’- Eleanor M. Fox

The Importance of Competition Policy

‘Developing countries’ inclusive sustainable development value fits nicely with the democratic mandate that, if markets are for democracy, then markets must work for the people. The links between democracy and markets are virtuous. They deserve to be nurtured, on national, regional and world levels.’- Eleanor M. Fox

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