To

The Secretary
Ministry of Electronics and Information Technology
Electronics Niketan,
6, CGO Complex, Lodhi Road,
New Delhi - 110003

3rd July, 2024

Subject: Stakeholder Consultation conducted by CCLE on "AI in India: Roadmap Ahead".

Dear Sir/ Ma'am,

We are elated to inform that we had organized a stakeholder consultation on the theme, "**AI in India: Roadmap Ahead**" on 28th June 2024 (Friday).

Some of the panelists at the conference included:

1. **Shinawat Horayangkura**, **PhD,** Director, Consumer Product Market Structure Division, Trade Competition Commission of Thailand
2. **Dr. Praveen K Choudhary**, **PhD,** Director, Global Operations, HCL Technologies
3. **Isha Suri**, Research Lead, Centre for Internet and Society
4. **Nikhil Dubey**, Assistant Director, Department of Science and Technology, Govt. of Madhya Pradesh
5. **Vineet John Samuel** (Co-Moderator), Doctoral Fellow, Hertie School, Germany
6. **Vikrant Singh** (Co-Moderator), Founding Director, CCLE

Please find attached the memorandum of the consultation along with the minutes.

We would be happy to discuss more on the topic and will be looking forward to meeting you in person.

Best regards,
Sumit Jain
Director
Centre for Competition Law and Economics
www.icle.in
Contact No. +91 93116 83349; +91 81072 87270
Email ID: centrecomplaw@gmail.com; contact@icle.in

Memorandum of the stakeholder consultation conducted by CCLE on the "AI in India: Roadmap Ahead"

Key Takeaways:

1. The Indian AI market is up-and-coming and has great potential. With several startups entering the arena with new-age innovations in AI, there is an optimism that homegrown entities might compete with the dominant corporations of the West if the regulatory regime functions effectively.

2. AI use cases are multifold viz. Agriculture, health, education, financial sector, governance etc. It is a disruptive technology which has enormous market potential.

3. It was majorly agreed that the development of AI infrastructure in any country requires large financial resources and cutting-edge innovation. Governments and corporations are investing heavily in this technological development.

4. European regulations have an inevitable impact on how India conceptualizes its laws and policies (Brussels effect). Southeast Asian countries are closely monitoring what the EU is currently deliberating on the formulation of policies for regulating AI. However, the copy-pasting approach from the EU will not necessarily work in the Indian context and therefore, a need for more intensive debates, discussions and stakeholder consultation before formulating the regulations is required.

5. There are several regulatory concerns in AI development like antitrust, algorithmic bias, content moderation, overlap between AI and privacy, cybersecurity etc. which need to be addressed by the governments.

6. There should be a balance between innovation and regulation, however, the regulators must also ensure that the market should not be tilted towards dominant players and there should be fair competition.

7. To develop a culture of innovation in the country where domestic players can compete with the tech majors, the focus should be on skilling and capacity building.

There were other discourses as well on the Schumpeterian approach on innovation, the inbuilt biases in technological innovations, the competition concerns in the AI industry and how the regulators need to check the anticompetitive conducts of Big Tech, governments current strategy for AI etc. which are highlighted in the minutes of the consultation.

Minutes of the Stakeholder Consultation

Date: 28th June, 2024 (Friday)
Time: 1800 hours IST

VJS: What is Thailand's progress on AI strategy?

Panelist 1: Thailand plans to get investment in AI through FDI. We have a five-year plan to work on the same. There are some developments in AI regulations as well, however, competition authority is not at the forefront of it. There is a separate electronic department which is looking at it. Thailand overall has put large financial resources into AI and we hope to see full developments in the near future.

VJS: India and Thailand are both working on data centers. The core goal also seems to be data sovereignty. What is the industry's perception on AI?

Panelist 2: Industry catches the peak of technology before it is the talk of the town; Indians are most flexible when it comes to technology across the world; every seven years there is a cycle of technology; AI is different from AI revenues; responsible AI has taken centre stage; US ecosystem is different from India; it is never easy for Indian companies to compete with the Big Tech given the sheer amount of money involved; our strength is in

making partnership; this gives Indian companies the edge to hit the AI journey; solutions are based on business cases; understanding the requirement of customers is very important;

VJS: There is a need for core capacity and knowledge not only within the government but also in think tanks when it comes to targeting models for AI regulation. The EU has shown us the way. What do you think about our readiness when it comes to regulating the foreign Big Tech players, as well as homegrown entities?

Panelist 3: We need to take a couple of steps back. Regulation always follows a lot of discussion and stakeholder consultation. Brussel's effect is real to the extent that we follow what other jurisdictions do. My problem is that we import the regulations in the wrong manner. The question we need to ask is whether our tech policy regulations have been able to deliver consumer benefits. The question is whether each stakeholder has been able to make the due negotiation with the state in making the regulation. These stakeholders include industry, think tanks, consumers and rights groups which represent these consumers. The transformative potential of AI is well acknowledged. But the devil lies in the details. We will not be able to realize the true potential unless we fix some core issues which are present in the technology. No one regulator will be able to solve the issue. For instance, the competition aspect could be one issue. But there are other aspects such as algorithmic bias, content moderation and overlap between AI and privacy. There is a requirement for some guardrails for technology. The absence of capacity cannot be an excuse. Capacity ought to follow.

VJS: What is the government's perception of AI?

Panelist 4: There are two broad concerns in the government. One is that self-regulation is not going to work and the second is that how that regulation doesn't stifle innovation. It is very important that the government maintains the differentiating line between these two aspects whenever it intervenes. India is currently waiting for the global landscape to emerge

like it did in the DPDP Act. There are two models for us - One is the US model and the other is the EU model. India is likely to have the tilt towards the US given the diversity involved. Homogeneous AI policy is either not possible, or possible with a farsighted vision. Startups and innovation also have to be taken care of. There is one more overlap apart from AI and privacy, i.e. AI and cybersecurity. This is important because India is vulnerable when it comes to data. India is certainly taking AI seriously and it has invested INR 10,000 crore in that direction.

VJS: There is a draft royal decree on the business usage of AI in Thailand. Interestingly, that uses the EU's approach to the risk involved. How is it looking?

Panelist 1: It is correct that we have adopted the EU approach. But that's not only in AI but in other laws as well. The second reason for adopting the EU approach was that at that point in time, it was the only regulation available across the globe. The Electronics department is currently working on the draft and they want to have an efficient regulation. They want to balance regulation with innovation. We are also looking forward and the upcoming models such as the UK's take on AI among others.

VJS: Indian companies have always traversed the globe when it comes to navigating regulation. How different would it be for AI?

Panelist 2: Other technologies were a bit static for the last 20 years as you could use the same infrastructure again. The AI has changed the technology stack. The importance of data has seen a transformative shift. Fifteen years back data was a pain point, now it's a success point. While we have always navigated the global regulatory regime, AI throws new challenges. Technology always has inbuilt challenges and concerns that the technology makers are unaware of. The LLMs we are currently using were created by the West and might not always work in the Indian context. American bias or UK bias is not necessarily an Indian bias which again is a bigger problem. The cultural difference is also important

when it comes to comparing jurisdictions. This has a bearing on the very definition of personal data. What may be personal in the US culture, may not be so in India or Europe. Another key aspect is who are you making the solution for. Contextualisation and customisation are required there. ISO standards have made the world a better place. ISO-42001 is about to kick in. It talks about ethics, leadership and data management.

VJS: There are concerns around the framing of regulation such as its ability to cater to context-driven values and also stifling innovation. How do you see this playing out in India?

Panelist 3: I think the narration between regulation vs. innovation is a false dichotomy. This narration is also created by Big Tech. This is wrong because net neutrality is a form of regulation. It is one of the most pro-innovation regulations. There is a larger inability to look at this evidence of pro-innovation regulation. While there is a divide between the US and EU as mentioned by one of the panelists before, even the US is recalibrating its approach with FTC at the forefront of taking on dominance. This is all despite them being ardent supporters of the free market. We need to ask what is the cost of innovation we are paying. This is important in the context of the merger control regime we have. It is important to take note that everyone across the globe is currently looking at regulation, not just India. The burden of proof should somewhat be shifted to the companies to prove that they are not abusing their dominant position. Context, as said earlier, is important. However, in the context of privacy, the conversation has been hijacked. 'Informed consent' is where the conversation should focus. As per a study conducted by us, we found out that technology is not apolitical/ neutral. The international norm setting has its own limitations.

VJS: Are these concerns playing out in the Indian context?

Panelist 4: The comments on shifting the burden of proof make a lot of sense. The government is treading very cautiously. For instance, take e-governance. The primary focus for governments across the states is how to use this AI in e-governance. For instance, we

have softwares which makes crop estimation in MP easier. We are also buying a lot of solutions in the health sector from startups. There are also some concerns about what if things go wrong. That also keeps us nervous.

VS: 67% of the resources are with the handful of Big Tech entities in the digital ecosystem. At the same time, there are homegrown players who are continuously coming up with newer innovations. This seems like an AI race. What does the future look like - some form of decentralization where the homegrown players would fulfil the market requirements or make peace with the fact that Big Tech is here to stay?

Panelist 1: There is a bit of uncertainty about the future. The use cases of AI are growing and this leads to opportunities for the homegrown players. But in the long run, things may not be the same. It is for the simple reason the data and financial resources you require are huge in this business. Big companies are likely to have an advantage over the small companies.

Panelist 2: Schumpeterian approach says that there will be displacement in the market to question the incumbent. For every Facebook there will be OpenAI and so on and so forth. The government getting into that dynamic is a bad idea. It cannot be said more bluntly. There is merit in saying that competition regulation and innovation go hand in hand. The sheer difference is that you should compete and not buy out. I actually don't think there is a conflict between the Big Tech and small players. I see that small players are catering to the market that Big Tech hasn't yet reached. For instance, an EV company could be thought of making a small bike which no incumbent big players thought of making.

Panelist 3: Big Tech became Big and dominant because of the absence of regulation. The conversation around regulation is simply hijacked. Any monetary fine by the regulator is a pittance for Big Tech. The assumption around dominance and abuse of dominance is regulatory inaction. Regulators need to be serious and proactive. Partnerships, too, have their own limitations. We also have to look at disruptive innovation through the

Schumpeterian approach. We also have to look at the merger regime so that the tech behemoths do not bully the new small startups.

Panelist 4: There has been inaction on the part of the government when it comes to regulating technology however it is also true that small players are filling the void left by the Big Tech. When it comes to contextualising the technology, startups have a very big role to play there. For the government, the focus is on skilling. Earlier, it was job creation and going through various stages even when it comes to the adoption of technology. Now this is changing.

VS: In addition to skilling, capacity building of regulators is also an important area to focus upon.

Concluding Remarks

Panelist 1: AI development has just begun and there is a long way to go. There are concerns around regulations. It is important to promote innovation, adopt a balancing approach and develop institutional capacity.

Panelist 2: Government and the industry have to sit together when it comes to enacting regulations. It all started in the US. You cannot simply first promote entities to get Big and dominant and then ask a competition commission to regulate them. India should not copy from the US. The Indian way is much more cooperative. Some key factors should be industrial growth and competitiveness outside the country. This would require a shift of focus from regulating the Big Tech to promoting homegrown startups.

Panelist 3: Algorithmic collusion is an issue to be tackled. The answer is that companies have to open up the black box. When it comes to importing regulations, one thing from which India should stay away is the revolving door policy. If they don't, conflicts are likely to be enshrined in the very negotiating process. It should rather be consumers at the centre stage.

Panelist 4: Promising times ahead. India's DPI is already there. We have a huge sweep to make. Frameworks and guidelines will come up before any legislation is enacted. The focus should be on consumers.