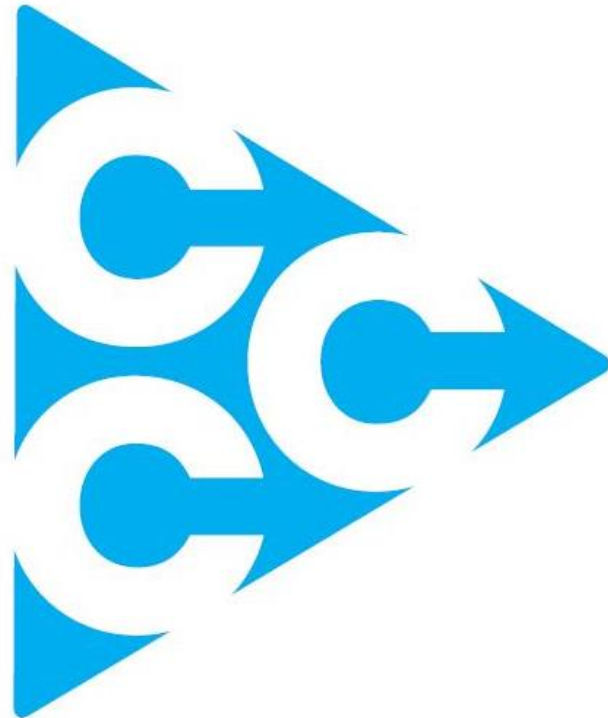


CARICOM  
competition  
commission



# Competition and the digital economy

**Nievia Ramsundar**

**Monday 13<sup>th</sup> February 2023**

**CTU/Commonwealth Workshop on  
“Effective Legislative Frameworks for  
Building the Digital Economy”,**

**Barbados**

# What we will cover

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A. Brief discussion on the digital economy

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B. Competition basics

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C. Competition and consumer concerns

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D. CSME readiness



# **Section A**

## **Brief**

### **discussion on**

#### **the digital**

#### **economy**

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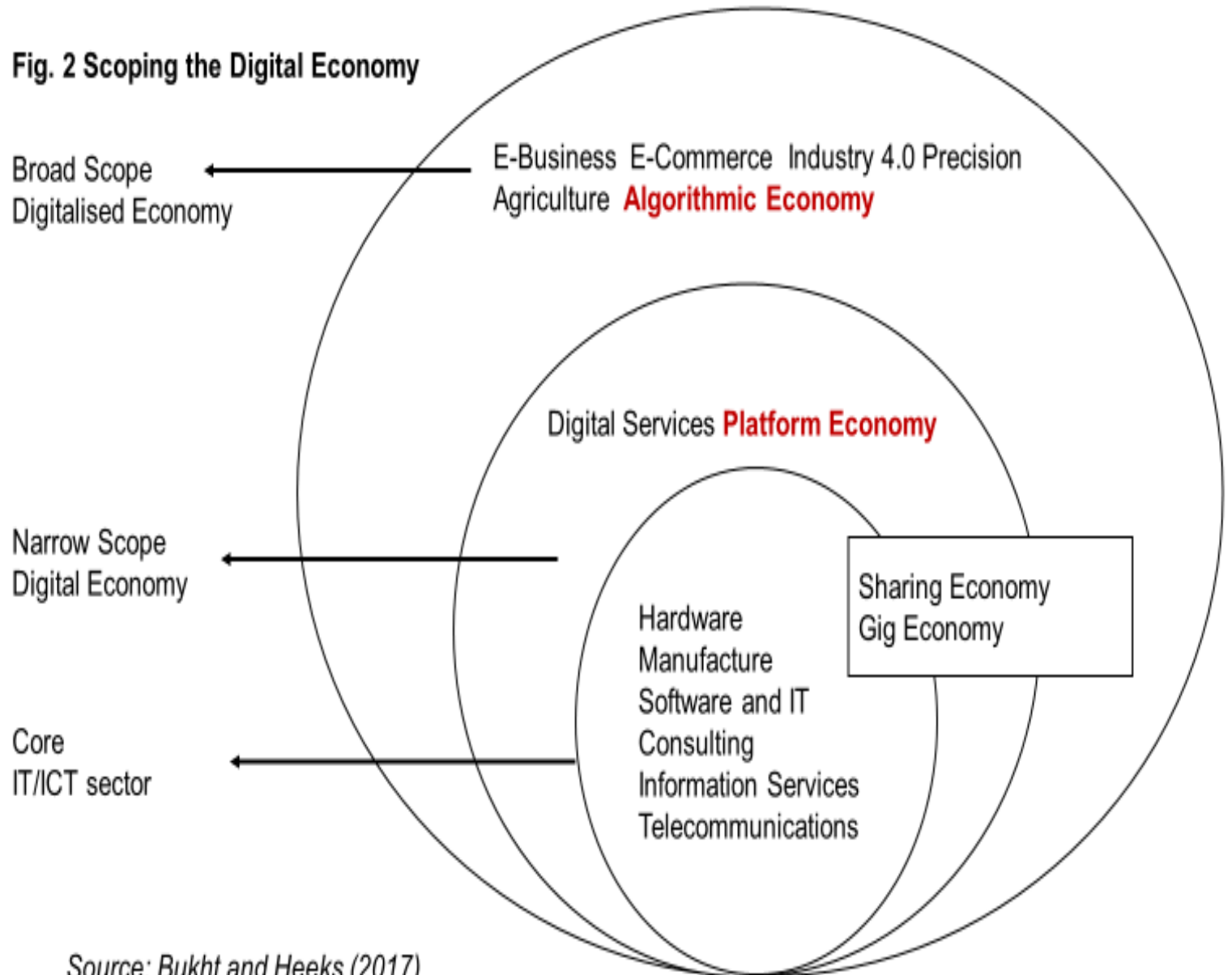
# There is no single definition of the digital economy

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- The digital economy **narrowly** consists of economic activities based on digital goods or services derived primarily from digital technologies (Bukt and Heeks, 2017)
- It can be expanded to include e-business ICT infrastructure, e-business and e-commerce (Mesenbourg, 2001)
- A **broader** view includes economic activities which are also reliant on or significantly enhanced by wider “digital inputs” of technologies, infrastructure, services and data (OECD, 2020), the implementation of which results in “digital dividends” (World Development Report, 2016)

# Scoping the digital economy

Fig. 2 Scoping the Digital Economy

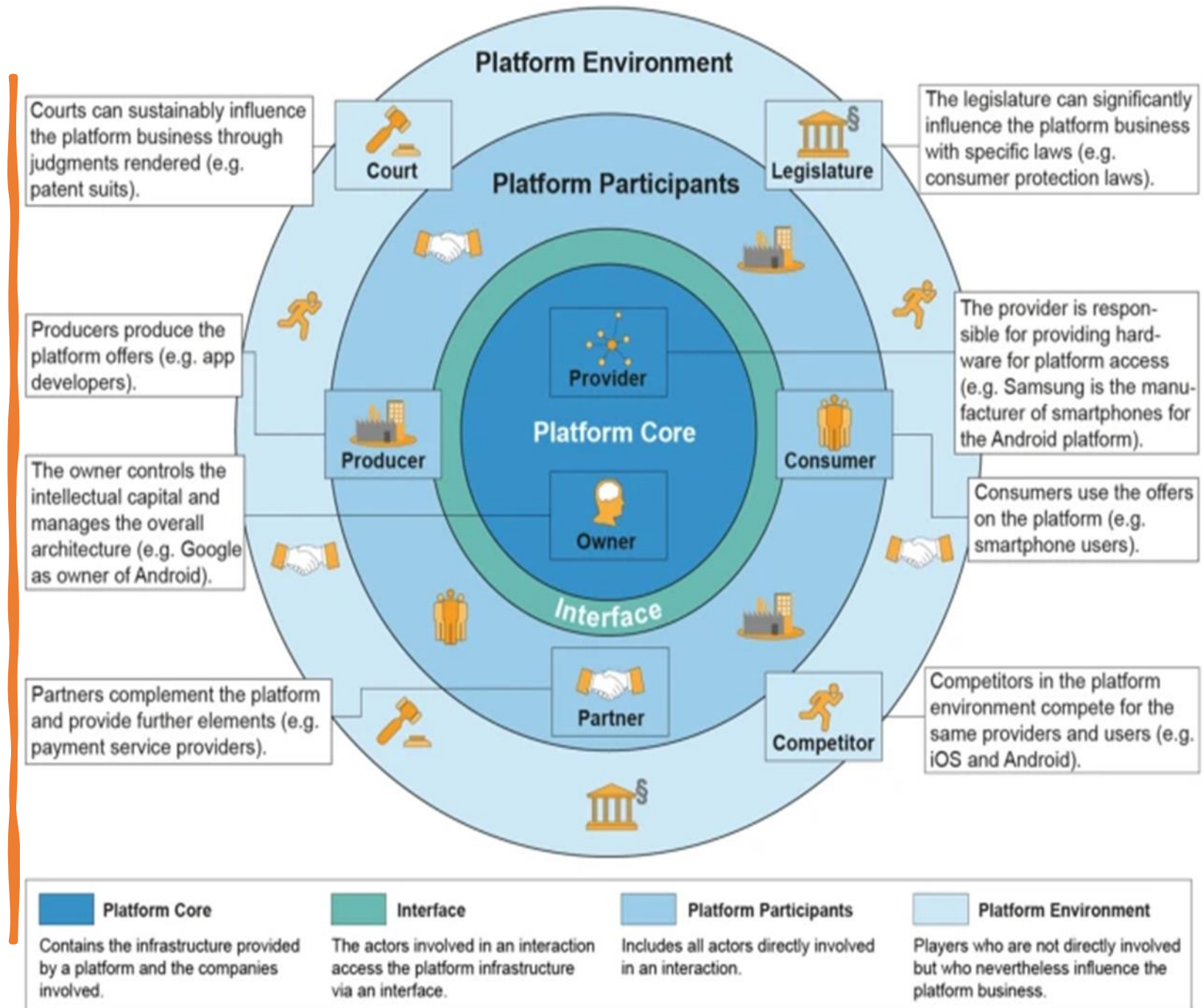


Source: Bukht and Heeks (2017)

# Scoping the platform ecosystem

—demand and supply

Source: Drewel, M., Özcan, L., Gausemeier, J. et al. (2021)



# Scoping the platform ecosystem - Algorithms

A key component of platform infrastructure and ecosystem for pricing and response is the increased use of **AI** through algorithms which act independently and predict, automate and optimize tasks by the mapping and recreation of human capabilities and intelligence behaviours through deployment of cognitive technologies

**Machine Learning** where algorithms build models based on data and statistical tools, continuing to learn as more data is introduced, aided by **Deep learning and reinforced learning**, - trial and error method selecting the option most successful; is used in targeted algorithms to analyse existing datasets in search of recurring patterns, conclusions are drawn based on the findings, and the knowledge gathered is applied to new data.

# The digital economy and economic growth

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New methods of communication and information sharing are possible through digital platforms which **facilitate transactions between distinct but interdependent groups of economic agents to create value** (platforms who facilitate users and third parties' communications, aggregators who are intermediaries between users and third parties such as Facebook, Google and Amazon)

Evangelista et al. (2014) and Niebel (2018) both show a **positive relationship between the digital economy and ICT on economic growth**

Large amount of **personal data** produced, which digital platforms and online retailers **analyse and use in their business strategies** through **predictive technologies**

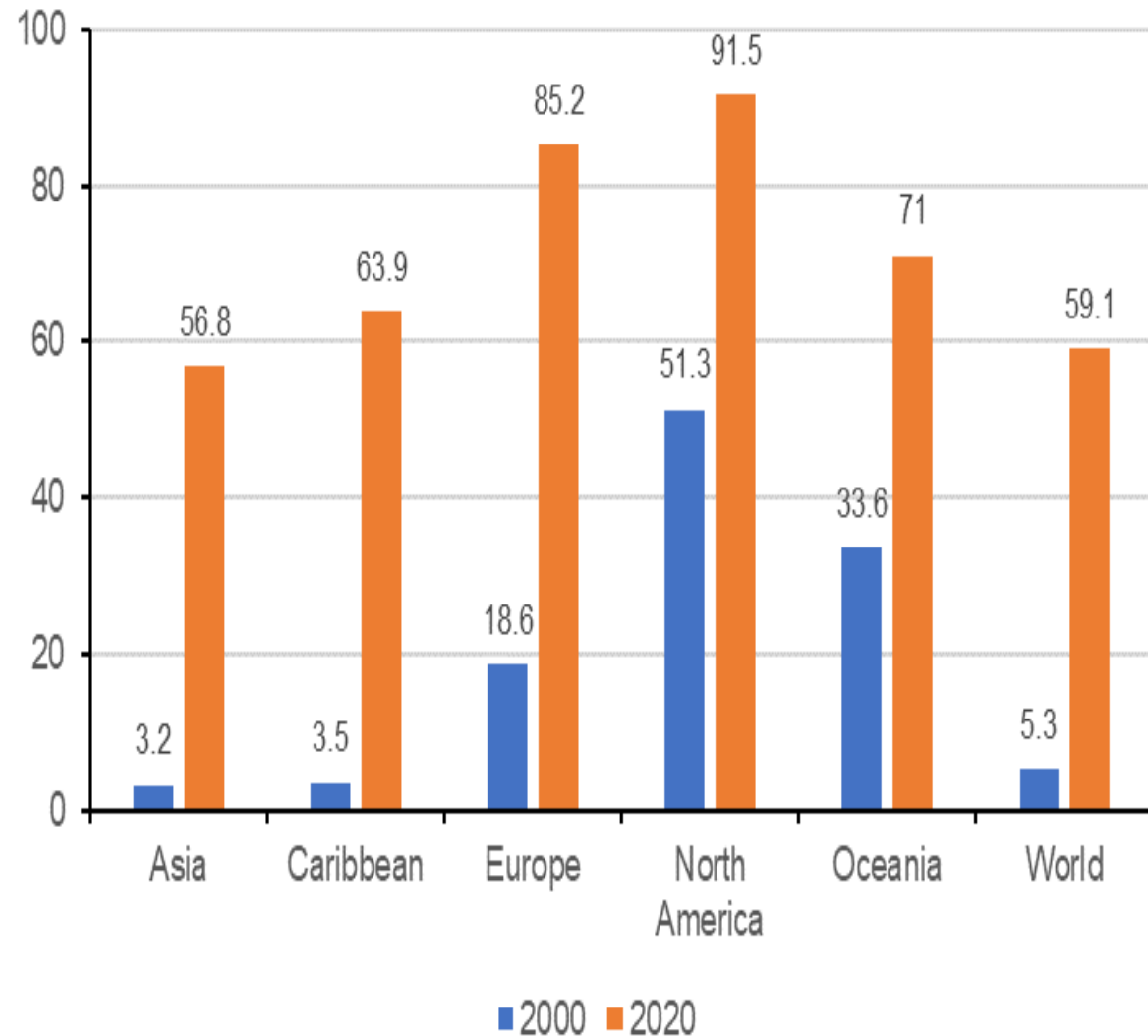
Digital solutions for complex **developmental challenges**: many Caribbean businesses moved to online platforms or the digital space to adapt to the "new normal" – food delivery apps and business continuity



## The digital economy and growth (cont'd)

Statistics from the International Telecommunications Union (ITU), show that the percentage of individuals in the Caribbean using the Internet increased from 3.5% in 2000 to 63.9% in 2020. This compares favourably to the global average of persons using the Internet which stood at 5.3% in 2000 and increased to 59.1% in 2020.

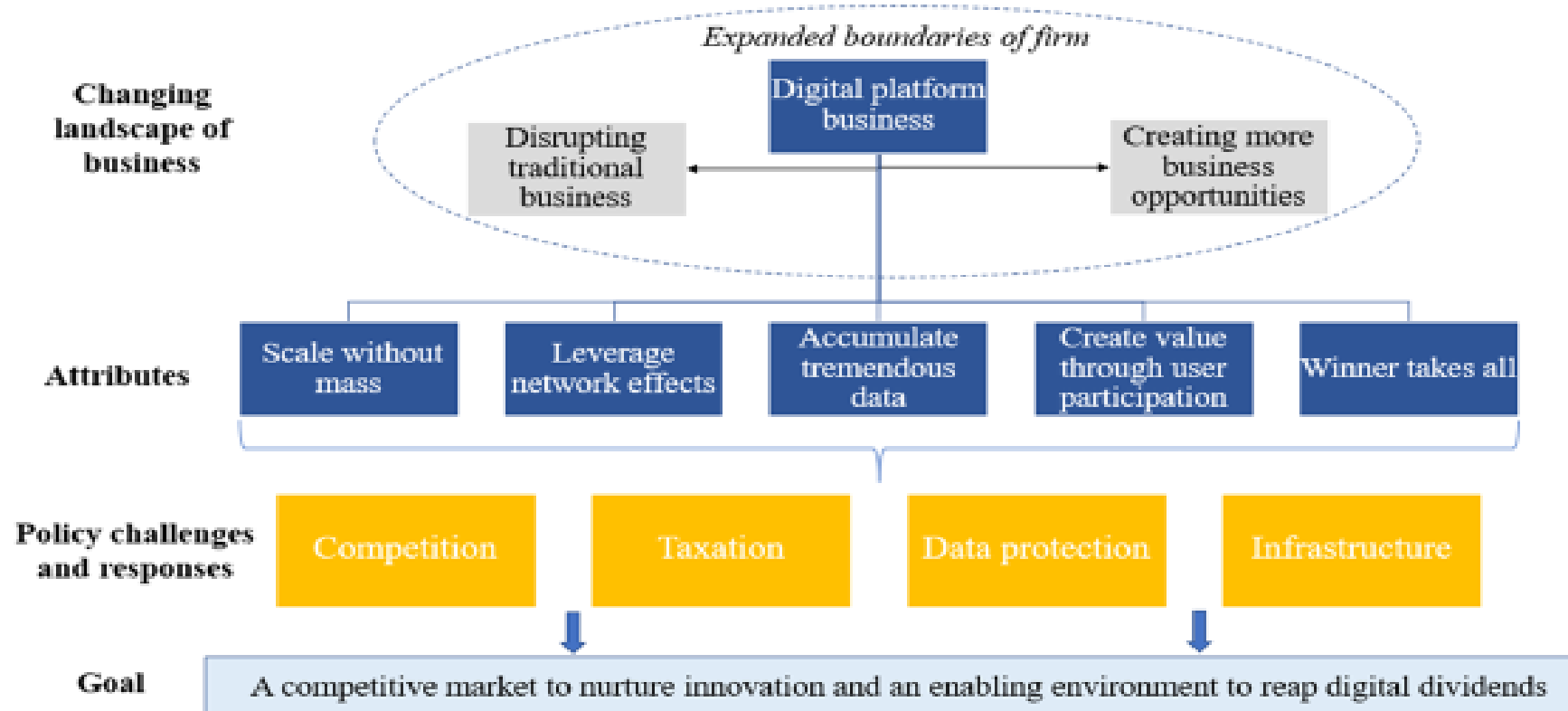
Figure 1: Percentage of individuals using the Internet by region (2000 and 2020)



Data source: International Telecommunications Union (ITU)

# Macro policy interventions

Fig. 4 Policy and regulatory responses



Source: Chen (2019), *Policy and Regulatory Issues with Digital Businesses*



# **Section B**

# **Competition 101**

# Competition 101

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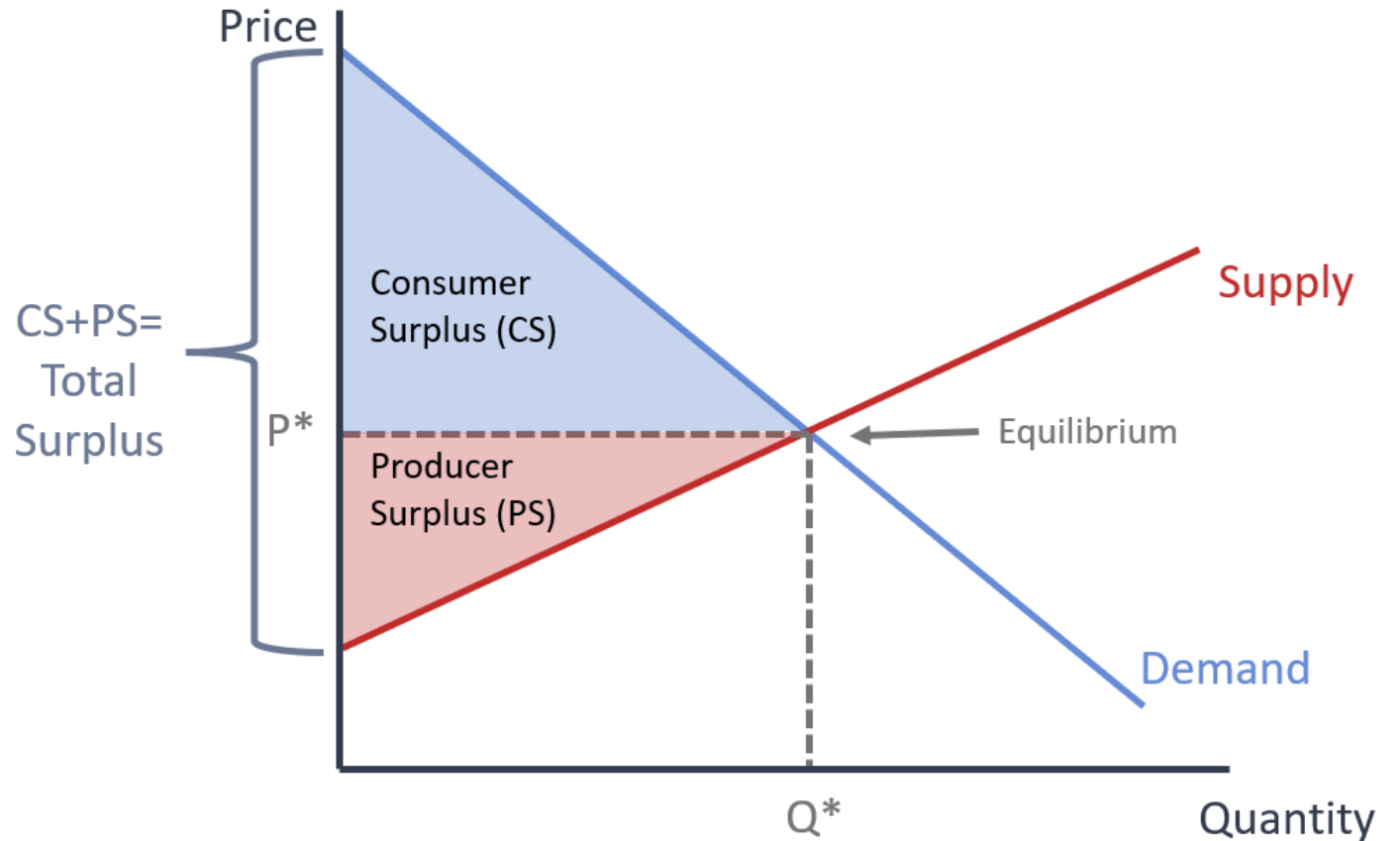
Competition law is a subset of a wider toolkit of competition policy, which broadly encapsulates trade, finance and other key components of making an economy work

Aim is to ensure that firms do not restrict or distort competition in a way that prevents the market (whether nationally or regionally) from functioning optimally i.e. affecting **consumer welfare** and leading to **efficiency loss**

**Economic analysis** plays a critical role in assessing the object and effect of a firm's conduct on the marketplace: through market definition, assessment of market power, dominance and whether there is abuse of such i.e. building a **theory of harm**. It is only where intervention is required to prevent or correct a market failure that CL intervention is triggered

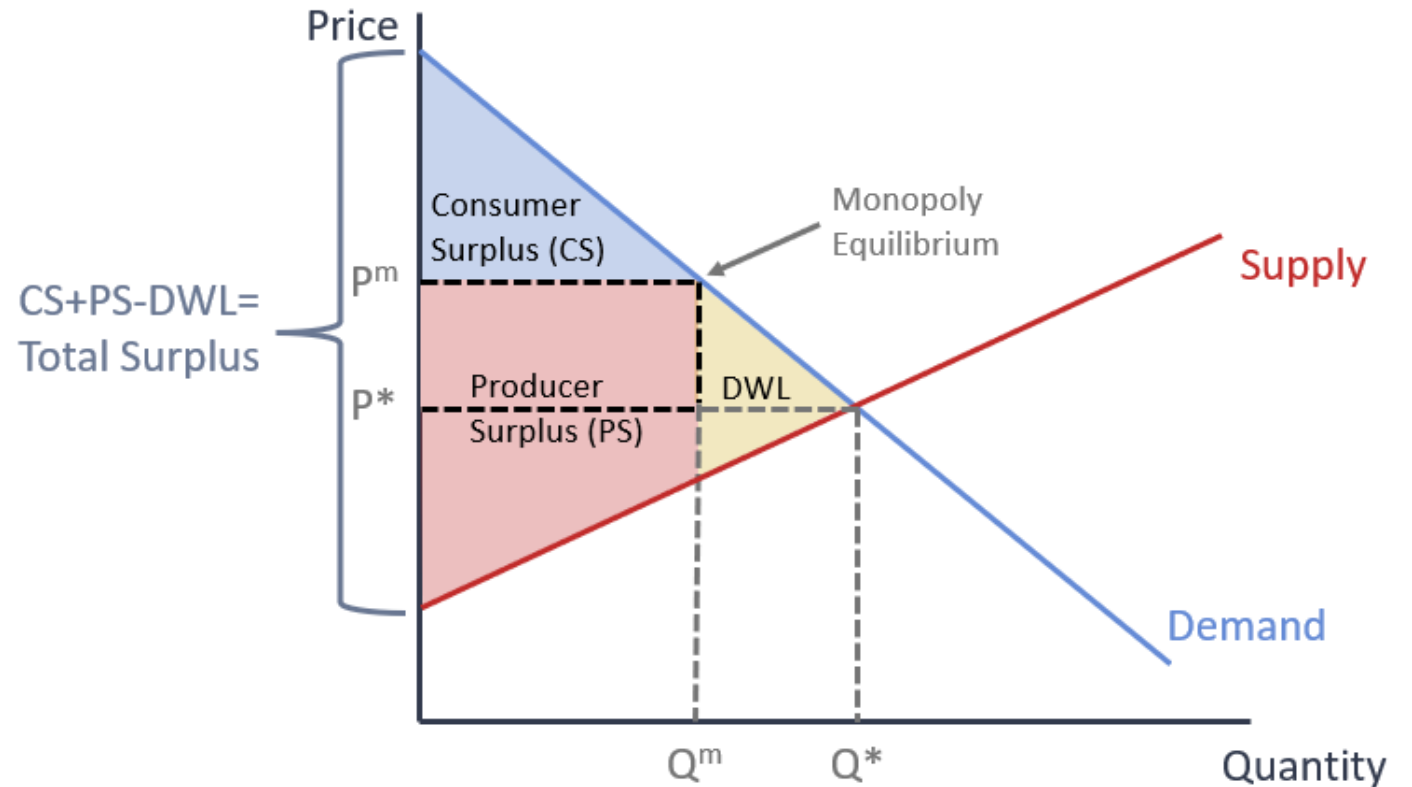
# Competition 101(cont'd)

Producer surplus is the difference between the cost of producing the good and the cost of selling the good. Consumer surplus is the difference between what the consumer is willing to pay and what the consumer actually pays. Total surplus is the sum of both and leads to **optimal efficiency** in the market



# Competition 101 (cont'd)

Anti competitive behaviour such as abuse of a monopoly position can lead to a **deadweight loss** – it occurs when some of the consumer surplus is transferred to the producer (for example the price is raised too far from equilibrium into the consumer surplus) leading to a loss to the market i.e. loss to the total welfare



# Competition 101 (cont'd)

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The presumption is that markets tend to work well when contested. In sectors where market forces may deliver an efficient outcome, certain factors or conduct may lead to an inefficient outcome:

- i. The **nature of the market** itself, such as scale or scope economies (which may not be connected to firm behaviour but may be reinforced by it), network effects (direct or indirect) which reward large firms with entrenched mature user base; Switching costs and customer lock-in; asymmetrical information and limited information; behavioural biases.
- ii. The **conduct of firms**, via, collusion (tacit or explicit), restrictive or prohibitive agreements (vertical or horizontal), consumer contractual clauses

# Competition 101 (cont'd)

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- Dominance in firms is not unlawful unless it leads to firm with **durable market power**, acting **independently** of competitors, exhibiting conduct which:
  - Can be an abuse of dominance
  - Enters into restrictive or prohibitive agreements
  - Conducts M&A that substantially lessen or impede effective competition
- Some sectors lend themselves to the creation of natural **monopolies**. However, CL intervenes where the monopolist uses its privileged position to exploit customers and trading counter-parties B2B commerce. CL works to compel **access** to networks and facilities, remove **bottlenecks** or **refusal to supply** to competitors
- Where there a few firms leading the relevant market, these firms form an **oligopoly** and can choose when to compete against each other and when to collude (tacitly or expressly)



# Competition 101 (cont'd)

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Instances of durable market power (ability to raise and sustain raised prices above the competitive level):

- Conduct which **excludes** competitors by virtue of the dominant firms' market position; "competition for a market" i.e. for all viable users
- Acquisition of emerging firms which may have potential to compete with a purpose of preventing their products getting to market '**killer acquisitions**'
- **Regulatory capture** that facilitates incumbent firms to maintain dominance despite decreasing product attraction to customers
- Strong network effects, economies of scale and scope, information asymmetries between firm and consumers, limited sharing of technical information between rivals (degradation of interoperability), switching costs, cross subsidisation



# **Section C**

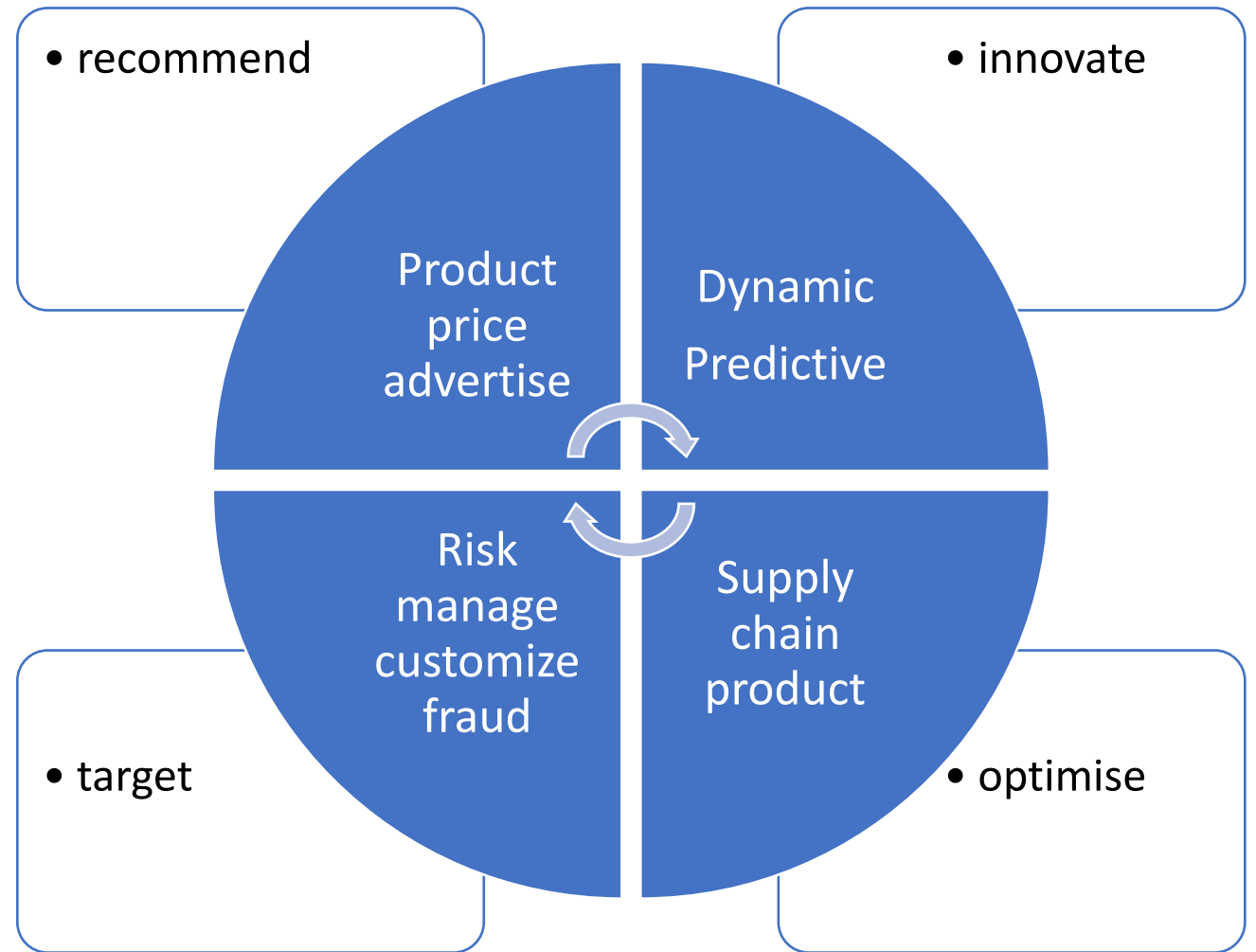
## **Competition and consumer concerns**

# DP features which can lead to market concentration and winner-takes-most/tipping dynamics

- i. **Multi sided** market with platform infrastructure
- ii. Strong **network effects** – value increases with growth of user base which can lead to “**tipping**”. This is more of an issue for single homing but can be mitigated if users multi-home
- iii. **Switching costs** for user (including time and effort to enter into substitutable service)
- iv. Vertically integrated and conglomerate business models which act as **gatekeepers** between downstream firms and users; leveraging of market power through tying and bundling strategies which foreclose competition in the **digital ecosystem**
- v. **Economies of scale and scope** since low or zero variable costs favourable for scaling up and geographical expansion
- vi. Reliance on collection, storage and analysis of large amount of **user data** which is difficult to replicate and analyse
- vii. Business model with **low or zero price**, revenue earning through advertising or collection of customer data
- viii. Significantly **disruptive innovations** offered outside regulatory frameworks with reduced transaction and intermediary costs

# Features of algorithms which can facilitate anti competitive conduct

Algorithms can increase tacit **collusion** since they change structural characteristics of transparency and frequency of interaction, and can replace explicit collusion with tacit coordination – companies can implement collusive agreements without communication (ML algorithms can achieve this without being specifically programmed to do so)



# Additional competition concerns

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- **Hub-and-spoke** arrangements, (horizontal restrictions on the supply side or spoke, implemented through vertically related players that serve as a common “hub” (e.g., a common manufacturer, retailer or service provider). The “hub” facilitates the coordination of competition between the “spokes” without direct contacts between the spokes. In the extreme, the effects of a horizontal hard-core cartel can be achieved purely based on indirect communication between the horizontally aligned members of a hub and spoke arrangement
- The role of vertical restraints in facilitating horizontal collusion meets renewed interest by the enforcement and business community, in particular in the light of an increased use of pricing related tools and contractual provisions in e-commerce transactions. The business community faces the challenge of complying with legal standards which may be still unclearly defined, and awaiting clarification by the courts, through enforcement practice or agency guidelines

# Additional competition concerns (cont'd)

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- **Bundling and tying** can benefit consumers where they increase quality and convenience but are anticompetitive when used as a strategy to foreclose competitors
- **Exclusive dealing and loyalty rebates** can also be anticompetitive where they prevent competitors the opportunity to generate a consumer base or access that base
  - New harms such as forced free riding, abusive leveraging and self preferencing, and privacy policy tying, are arguably expanded forms of exclusivity, margin squeeze and bundling
- **Data and technical information needed to participate in the ecosystem** can also be competitive assets and potential entry barrier with possibility of refusal to deal and margin squeeze
- **APPAs** (across platform parity agreements) prohibit producers from selling at lower retail prices on their own sales sites or on rivals despite higher commissions

# Key consumer concerns

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**Exploitative practices** – digital platforms may take advantage of human biases and fallibility to influence consumer behaviour in ways that only benefit the platform; platform's operational practices pertaining to disclosure, transaction process and completion can be ambiguous or lack sufficient transparency e.g. 1-click processing

**Data privacy, security, and ownership** – The average consumer, especially while accessing a digital service that is free at source eg. Facebook, Google, tik tok, may sign usage agreements that limit their control over how the data they have freely provided can be used, sold to third-party vendors, where it is stored, etc. Each of these concerns can impact negatively on the consumer where their private information is shared with parties they do not want to have that data, or even stolen data than can be used to conduct phishing actions. The move towards digitization of government services and the access to and security of that data is also an ongoing concern

**Algorithmic biases and use of Artificial Intelligence (AI)** – Programming tools can create cartel type scenarios in pricing; sale of data to third party vendors; and even negative outcomes for some minority groups from software packages such as facial recognition for security purposes

# Key consumer concerns with DE (cont'd)

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**Unfair trade practices and lack of transparency by e-commerce platforms** – can include pricing practices that “steer” consumers; predatory pricing practices are difficult to identify; redress mechanisms across international borders; country of origin issues and location of sellers can be difficult to identify

**Inclusivity** - greater use of digital services may result in limitation of access by some disadvantaged consumers such as low income earners, rural communities, women due to high cost of service delivery (lack of Internet enabled devices, no internet service, etc.); there is also a literacy issue in some cases

**Asymmetry of information/bargaining power** – unequal power relationship between consumers and service providers, where the consumers may have limited education or understanding of the terms and conditions under which they use the services being provided. Service providers can take advantage of this power dynamic to the detriment of consumer welfare



# Case study – EU - Google

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## ➤ Self-preferencing:

- **Case T-612/17 Google Shopping**, where the European Commission found that Google had abused its dominant position in the markets for general search services in the European Economic Area by positioning, and displaying more favourably, in its search results, its own comparison shopping service compared to other competing comparison shopping services. It imposed a fine of €2.42 billion on Google

## ➤ Restrictive agreements:

- **Case 40411 Google Search** In 2019, Google was fined €1.49 billion for abusing its dominant position by artificially restricting the possibility of third-party websites to display search advertisements from its competitors. Google protected its dominant position in the market for online search advertising by concluding exclusive agreements with third parties, which were required not to source search ads from Google's rivals. Further, Google allegedly required third parties to take a minimum number of search ads from Google, to reserve the most prominent space on their search results pages to Google search ads, and to refrain from placing competing search ads above or next to Google search ads

# Position study – US

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## Restrictive agreements:

2020 US Department of Justice investigation into Google for payments of up to USD 12 billion to Apple. The payments were allegedly made in exchange for Apple establishing Google, already the dominant provider in search engines, as a default search engine on its mobile devices, at the expense of competitors. Also, in 2020, nine state attorney generals in the United States filed a lawsuit alleging Facebook and Google colluded to fix prices and divide the market for advertising on websites and mobile apps

# Position study – US

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Published in July 2022, the US House Investigation into Digital Markets, stated that of the companies investigated:

“...revealed common problems.

First, each platform now serves as a **gatekeeper** over a key channel of distribution. By **controlling access to markets, these giants can pick winners and losers throughout our economy.** They not only wield tremendous power, but they also abuse it by charging exorbitant fees, imposing oppressive contract terms, and extracting valuable data ...

Second, each platform **uses its gatekeeper position to maintain its market power.** By **controlling the infrastructure of the digital age,** they have surveilled other businesses to identify potential rivals, and have ultimately bought out, copied, or **cut off their competitive threats.**

And, finally, these firms have **abused their role as intermediaries** to further **entrench and expand their dominance.** Whether through self-preferencing, predatory pricing, or exclusionary conduct, the dominant platforms have exploited their power in order to become even more dominant.”

# Position study – US

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The US NTIA released in February 2023 its report, *Competition in the mobile application ecosystem* which states that the current app store model - dominated by Apple and Google - is "harmful to consumers and developers by inflating prices and reducing innovation. **The firms have a stranglehold on the market that squelches competition**

- *The policies that Apple and Google have in place in their own mobile app stores have created unnecessary barriers and costs for app developers, ranging from fees for access to functional restrictions that favour some apps over others*
- *When tech platforms get big enough, many find ways to promote their own products while excluding or disadvantaging competitors -- or charge competitors a fortune to sell on their platform*

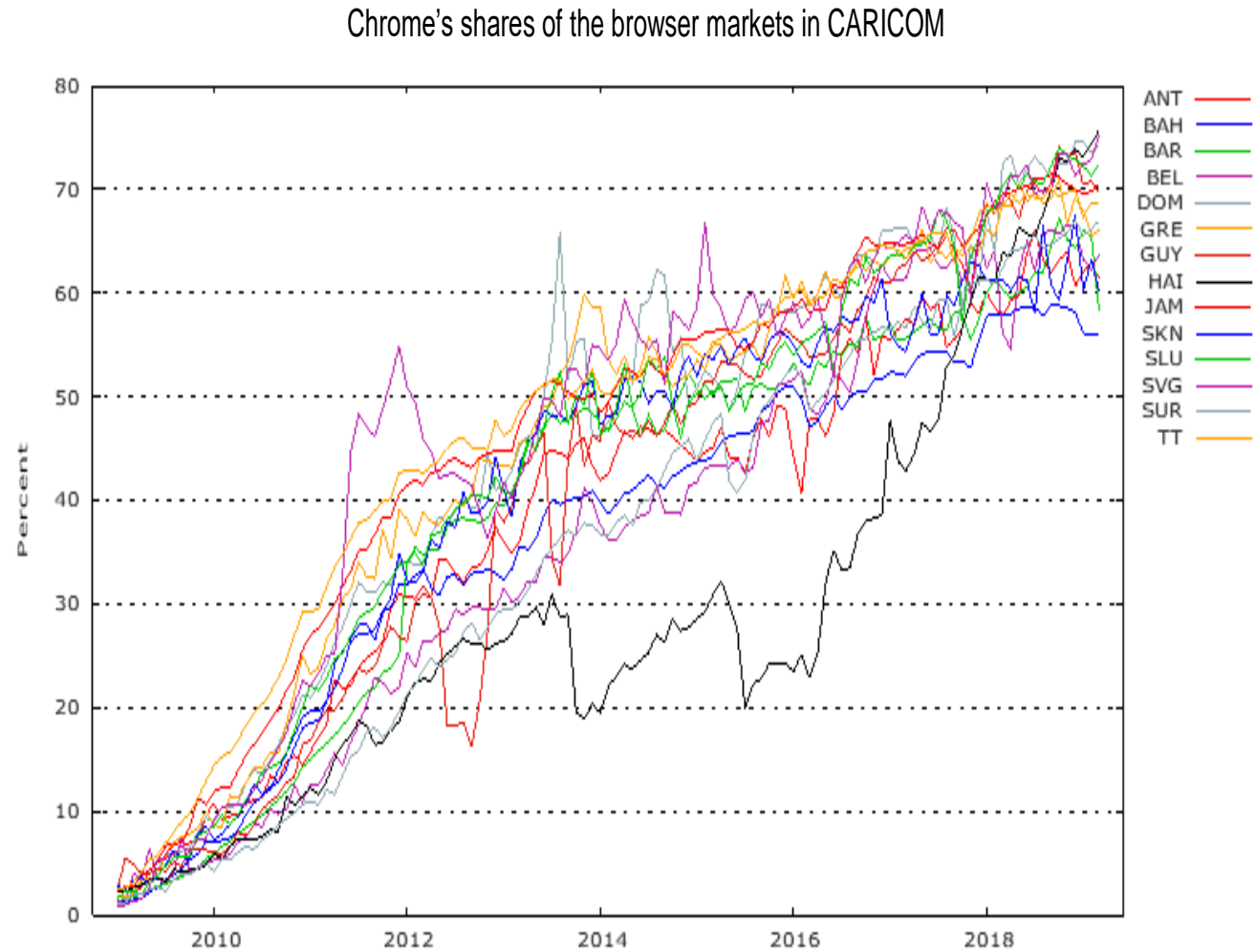


## **Section D**

**CSME  
readiness for  
competitive  
digital  
economy**

# Relevance of Competition concerns in CARICOM

Figure 5: Google Chrome and Facebook's monthly shares of browser and social media markets in CARICOM (Jan 09-Mar 19)



Data Source: statcounter database

# Relevance of Competition concerns in CARICOM

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- Large digital companies or platforms are regularly used in CARICOM. For example, **Figure 5** presents the monthly market shares of Google Chrome in the browser markets in CARICOM from January 2009 to March 2019. The graph shows an increase in the shares of Chrome in the browser markets across the region from an average of 1.9% in January 2009 to 67.1% in March 2019. Additional data showed that as at March 2019, Safari held the second highest individual market shares in the browser markets in all the countries, except for Barbados. Together, Chrome and Safari accounted for almost 80% of the browser markets in each CARICOM Member State
- While Google owns the Chrome browser and Apple owns the Safari browser, Google Search is the default **search engine** on both internet browsers, which increases the tendency of users in the region to use Google search, securing its position as a dominant supplier of general online search

# Relevance of Competition concerns in CSME

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Hypothetically, given that Google search is likely to be the leading general online search engine in the region, it could leverage its position in other digital markets based on the indirect network effects, e.g. in the DM for the supply of general online search advertising in each Member State

However, no official statistics available for the region to verify Google's position in market for the supply of the general online search advertising in CARICOM, nor how this potential dominant position has: **(a) affected the cost of general online search advertising for regional businesses, e.g. higher costs for advertising; or (b) deterred other search engines that may be as efficient as Google, from entering or expanding their reach in the region**



# Community Competition Policy

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The Preamble to the Revised Treaty of Chaguaramas also expresses the intentions of the Member States regarding competition enforcement within the CSME that: *... the benefits expected from the establishment of the CSME are not frustrated by anti-competitive business conduct whose **object or effect** is to prevent, restrict, or distort competition; ... the application and convergence of national competition policies and the cooperation of competition authorities in the Community will promote the objectives of the CSME.*

The **Community Competition Policy** is at Chapter VIII RTC and is an integral part of the economic integration process to ensure free and fair trade within the CSME, as per Article 169 in Chapter VIII:

- (a) ensure that the benefits expected from the establishment of the CSME are not frustrated by anti-competitive business conduct
- (b) promote and maintain competition and enhance economic efficiency in production, trade and commerce
- (c) prohibit anti-competitive business conduct which prevents, restricts or distorts competition or which constitutes the abuse of a dominant position in the market.
- (d) promote consumer welfare and protect consumer interest

# Community Competition Policy (cont'd)

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Chapter VIII, creates a tiered system for competition enforcement in the CSME:

- (i) ***A Community responsibility*** for the establishment of norms and institutional arrangements and maintenance of information systems to enable consumers and enterprises to be informed on the operation of markets within the CSME;
- (ii) ***A Competition Commission*** empowered with the exclusive competence for anti-competitive cross border business conduct in the CSME; and
- (iii) ***National competition enforcement*** with exclusive competence to Member States for anti-competitive business conduct within the jurisdiction of the Member State, once so legislated.

The **CCC** is established pursuant to Article 171 to ensure achievement of those goals and to address cross-border anti-competitive business conduct. The RTC also requires a sharing of that role by the national competition authorities of Member States who are required to cooperate with the CCC to achieve compliance with the rules of competition

# Comparative Review of Substantive Competition Provisions in the CSME Member States – 4 out of 13

Member States	Legislation	Restrictive Agreements	Abuse of Dominance	Merger Review	Cooperation with the Commission
Jamaica	Fair Competition Act	✓	✓	x	x
Barbados	Fair Competition Act	✓	✓	✓	✓
Trinidad & Tobago	Fair Trading Act	✓	✓	✓	✓
Guyana	Competition & Fair Trading Act	✓	✓	x	✓
CARICOM Draft Model Law on Competition	CARICOM Draft Model Law on Competition	✓	✓	✓	✓

# Summary of Substantive Legal Tests in Member State Competition Legislation

Business Conduct	Jamaica Fair Competition Act	Trinidad & Tobago Fair Trading Act	Barbados Fair Competition Act	Guyana Competition & Fair Trading Act	CARICOM Draft Model Law on Competition
Restrictive Agreements	s.17(1): "...provisions that have as their <b>purpose the substantial lessening of competition</b> or have <u>or are likely to have the effect of substantially lessening competition in a market.</u> "	s.17(2): "...Any decision or concerted practice of an association of enterprises, <b>the object of which is the prevention, restriction or distortion of competition...</b> "	s.13(1): "All acts or trading practices prescribed or adopted by... <b>that result or are likely to result in the disruption or distortion of competition...</b> "	s.20(1): "(a) all agreements...and (b) concerted practices or decisions... <b>which have or are likely to have the effect of preventing, restricting or distorting competition...</b> "	s.17(1): "all agreements... <b>which have or are likely to have the effect of preventing, restricting or distorting competition...</b> "
Abuse of Dominance	s.20(1): "...abuses a dominant position if it <b>impedes the maintenance or development of effective competition in a market.</b> "	s.21(1): "...abuses that power if it <b>impedes the maintenance or development of effective competition in a particular market.</b> "	s.16(3): "...abuses a dominant position if it <b>impedes the maintenance or development of effective competition in a market...</b> "	s.24(1): "...abuses a dominant position if it <b>impedes the maintenance or development of effective competition in a market.</b> "	s.21(1): "...abuses a dominant position if it <b>impedes the maintenance or development of effective competition in a market.</b> "
Merger Review	N/A	s.13(2): "...an anti-competitive merger is a <b>merger which restricts or distorts competition in a market.</b> "	s.20(6): "...the proposed merger would <b>not affect competition adversely or be detrimental to consumers or the economy.</b> "	N/A	s.25(4): "...that the proposed <b>merger would not affect competition or be detrimental to consumers or the economy.</b> "

# Competition Legislation and Sector-Specific Competition Provisions in CSME Member States

MEMBER STATES	Dedicated Competition Legislation	Sector-Specific Competition Provisions
Antigua & Barbuda	N/A	Telecommunications Act
Barbados	Fair Competition Act Fair Trading Commission Act	Telecommunications Act Utilities Regulation Act
Belize	N/A	Telecommunications Act Public Utilities Commission Act
Dominica	N/A	Telecommunications Act Electricity Supply Act
Grenada	N/A	Telecommunications Act Public Utilities Regulatory Commission Act
Guyana	Competition & Fair Trading Act	Telecommunications Act Public Utilities Commission Act
Jamaica	Fair Competition Act	Office of Utilities Regulation Act Telecommunications Act
Montserrat	N/A	Info-Communications Development Act
Saint Christopher & Nevis	N/A	Telecommunications Act Electricity Supply Act Public Utilities Act
Saint Lucia	N/A	Telecommunications Act Electricity Supply Act National Utilities Regulatory Commission Act
Saint Vincent and the Grenadines	N/A	Telecommunications Act Electricity Supply Act
Suriname	N/A	Telecommunications Act
Trinidad & Tobago	Fair Trading Act	Telecommunications Act Financial Institutions Act Regulated Industries Commission Act

# Adapting to the economics of the DE – market definition

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**Market definition** – necessary to determine market structure, market power and competitive dynamics, is based upon a concept of substitutability. S. 2(3) JFTA, S.2 TFTA, S. 2(3) GCFTA, all define a market for goods and services and those goods and services which are substitutable for them. Consideration of substitutes which, though not functionally perfect, compete for consumer time, attention and data may be required, as well as considerations of the broader ecosystem dynamics

**Mergers** – efficiencies may be broader in multi sided platform markets as user bases can be combined and service interoperability increased. Analysis may be required as to whether merger required as opposed to interoperability agreements and shared standards

# Adapting to the economics of the DM

## – market power

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Market power is usually referred to as “dominance” or “monopoly power” under the Competition Statutes (s. 16(2) BFCA, s.19 JFCA, s. 23(2) CFTA Gy, s. 20(a) TTFTA):

*"For the purposes of this Act, an enterprise holds a dominant position in a market if, by itself or together with an interconnected enterprise, it occupies such a position of economic strength as will enable it to operate in the market without effective constraints from its competitors or potential competitors"*

In the DE, a dominant position may exist on multi-sides of a platform ecosystem which may exhibit strong indirect network effects whereby the firm's competitive position in any of the markets or sides is influenced or driven by its competitive position on related markets or sides of the platform

Sector concentration measures are better indicators for systemic risk and lobbying power, rather than concentration or revenue share

# Adapting to the economics of the DE - Zero Price markets

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**Zero price** –multi-sided, free to user model, market definition tools may need to be tailored, e.g. applying the SSNIP test to each side

Analysis of market power may require trade offs between price and other factors such as quality changes

Unexpected outcomes of zero price markets include:

- **Free effect** – consumers unwilling to pay even nominally above zero for quality improvements they view positively; zero price therefore can be a barrier to firms who are unable to offer zero but must charge nominally
- **Privacy paradox** - where consumers' purchasing actions towards privacy and data are contradicted by their reported beliefs



# Adapting to the economics of the DM – data rights

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- Competition assessment required to determine whether the value of the particular consumer data set is a barrier to entry – is it unique or can the data be obtained from other sources, is it easily replicable
- Are there economies of scale and scope in the collection, storage, use of data
- Is there lock-in that prevents interoperability

# Adapting to the economics of the DM – legislative gaps

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- Lack of national competition legislation in 9 CSME Member States
- Lack of privacy and data legislation equipped for the digital economy
- Lack of clear search and seizure/investigative powers for national competition authorities and regional competition authority for evidence required
- There is need to ensure structural remedies rest with the competition commissions. Certain behavioural remedies may be best placed with sectoral and consumer commissions such as unfair contract terms and asymmetrical information

# Adapting to the economics of the DM – legislative gaps (cont'd)

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- Sectoral legislation where present tends to prescription; balance has to be struck between ex ante and ex post measures with the necessary **flexibility** to respond to the dynamic fast paced industry
- **Do not adopt EU or US models carte blanche** – we do not have many of the policy or legislative principles and frameworks. Work towards comparability and reciprocity of protection and benefit to be achieved rather than sameness

## Summary of Consumer Legislation in the CSME Member States – 9 out of 13

CSME Member State	Dedicated Consumer Protection Legislation	Sample of other laws relevant to consumer protection
Antigua & Barbuda	<ul style="list-style-type: none"> <li>Consumer Protection &amp; Safety Act</li> </ul>	<ul style="list-style-type: none"> <li>Sale of Goods Act</li> <li>Supply of Goods &amp; Services (Implied Terms) Act</li> <li>Unfair Control Terms Act</li> </ul>
Barbados	<ul style="list-style-type: none"> <li>Consumer Protection Act</li> <li>Consumer Guarantees Act</li> </ul>	<ul style="list-style-type: none"> <li>Bills of Sale Act</li> <li>Control of Standards Act</li> <li>Weights &amp; Measures Act</li> </ul>
Belize	N/A	<ul style="list-style-type: none"> <li>Sale of Goods Act</li> <li>Hire Purchase Act</li> <li>Public Utilities Act</li> </ul>
Dominica	N/A	<ul style="list-style-type: none"> <li>Supply Control Act</li> <li>Standards Act</li> <li>Noxious &amp; Dangerous Substances Act</li> </ul>
Grenada	<ul style="list-style-type: none"> <li>Consumer Protection Act</li> </ul>	<ul style="list-style-type: none"> <li>Food Safety Act</li> <li>Price Control Act</li> <li>Hire Purchase Act</li> </ul>
Guyana	<ul style="list-style-type: none"> <li>Consumer Affairs Act</li> </ul>	<ul style="list-style-type: none"> <li>Guyana National Bureau of Standards Act</li> <li>Food &amp; Drug Act</li> <li>Weights &amp; Measures Act</li> </ul>
Jamaica	<ul style="list-style-type: none"> <li>Consumer Protection Act</li> </ul>	<ul style="list-style-type: none"> <li>Security Interest in Personal Property Act</li> <li>Electronic Transactions Act</li> <li>Hire Purchase Act</li> </ul>
Saint Kitts & Nevis	<ul style="list-style-type: none"> <li>Consumer Affairs Act</li> </ul>	<ul style="list-style-type: none"> <li>Consumer Credit Act</li> <li>Telecommunications Act</li> <li>Sale of Goods Act</li> </ul>
Saint Lucia	<ul style="list-style-type: none"> <li>Consumer Protection Act</li> </ul>	<ul style="list-style-type: none"> <li>Distribution &amp; Prices of Goods Act</li> <li>Telecommunications Act</li> <li>Metrology Act</li> </ul>
Saint Vincent & the Grenadines	<ul style="list-style-type: none"> <li>Consumer Protection Act</li> </ul>	<ul style="list-style-type: none"> <li>Supplies Control Act</li> <li>Electronic Transactions Act</li> <li>Sale of Goods Act</li> </ul>
Suriname	N/A	<ul style="list-style-type: none"> <li>Economic Offences Law</li> <li>Technical Regulations on Labelling, Food Hygiene and Safety</li> <li>Law on Electronic Legal Transactions</li> </ul>
Trinidad & Tobago	<ul style="list-style-type: none"> <li>Consumer Protection &amp; Safety Act</li> </ul>	<ul style="list-style-type: none"> <li>Unfair Contract Terms Act</li> <li>Electronic Transactions Act</li> <li>Sale of Goods Act</li> </ul>

# Substantive Protections and Redress in First and Second Generation Consumer Legislation

Member States	Legislation	Type	Prohibitions against unconscionable agreements/unfair trade practices	Specific E-Commerce Protections	Prohibitions against the supply of harmful/defective goods	Individual right of access to institutional redress mechanisms	Quality Standards for the supply of Goods or Services
Antigua & Barbuda	Consumer Protection & Safety Act, 1987	First generation	x	x	x	x	x
Barbados	Consumer Protection Act, 2002	Second generation	✓	✓	✓	✓	✓
Grenada	Consumer Protection Act, 2020	Second generation	✓	✓	✓	✓	✓
Guyana	Consumer Affairs Act, 2011	Second generation	✓	✓	✓	✓	✓
Jamaica	Consumer Protection Act, 2005	Second generation	✓	x	✓	✓	✓
Saint Christopher & Nevis	Consumer Affairs Act, 2021	Second generation	✓	✓	✓	✓	✓
Saint Lucia	Consumer Protection Act, 2016	Second generation	✓	✓	✓	✓	✓
Saint Vincent and the Grenadines	Consumer Protection Act, 2020	Second generation	✓	✓	✓	✓	✓
Trinidad & Tobago	Consumer Protection & Safety Act, 1985	First generation	x	x	x	x	x
CARICOM Draft Model Consumer Protection Bill	CARICOM Draft Model Consumer Protection Bill	Second Generation	✓	✓	✓	✓	✓

# Consumer welfare remedies

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**Legislation to address digitization** – In the majority of CARICOM member states the existing Consumer Protection legislation is not geared towards addressing new and emerging consumer concerns arising from increased usage and growth of the digital economy. The enactment of the CARICOM Model Consumer Protection Bill 2016 would be an important step in the process of addressing distance selling through digital platforms. Updated provisions for protections against unfair contract terms, price gouging etc should be included

# Consumer welfare remedies

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**Jurisdictional overlaps** – existing legislation is not always clear about the roles and responsibilities of regulatory agencies that enforce CP provisions - laws may not adequately address the concerns of consumers using digital financial services; the existing regulatory framework enforced by Central Banks and Financial Services Commissions are not explicitly geared towards consumer protection and focus more on prudential regulation and financial stability. There may also be no provision for the sharing or exchange of information in the legislation of the respective regulatory authorities and this gap can be exploited by enterprises

# Closing comments

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- This area cannot be covered in one session
- CCC is here to advise and assist Member States to formulate policy and legislation in competition law and consumer protection and to assist their advocacy internally
- Contact us for questions or help and we will be happy to assist to bring all MS into RTC compliance and to expand the policies towards meeting new and evolving technologies



# Additional Reading

- *A new competition framework for the digital economy*, 2019, Schallbruch, Schweitzer and Wambach
- *Competition policy for the digital era*, 2019, Cremer, de Montjoye, Schweitzer
- UNCTAD's *Digital Economy Reports*, 2019, 2020, 2021, 2022
- *OECD Handbook on Competition Policy in the Digital Age*, 2022
- *Competition Law and Regulation in Digital Markets*, APEC, 2022
- Drewel, M., Özcan, L., Gausemeier, J. et al. *Platform Patterns—Using Proven Principles to Develop Digital Platforms*. *J Knowl Econ* 12, 519–543 (2021). <https://doi.org/10.1007/s13132-021-00772-3>
- Competition and consumer legislation for CSME available on [www.caricomcompetitioncommission.com](http://www.caricomcompetitioncommission.com)
- CCC State of Competition 2019-2021 at [http://www.caricomcompetitioncommission.com/images/pdf/report\\_soc.pdf](http://www.caricomcompetitioncommission.com/images/pdf/report_soc.pdf)
- CCC/BFTC 2019 competition commissioners training at <http://www.caricomcompetitioncommission.com/images/pdf/Commissioner%20Workshop%20Agenda.pdf> (click links in agenda for presentations)

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