Page 3542 - 3562 **DOI:** *https://doi.org/10.63108/IJLMH.13110*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 9 | Issue 5

2026

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Ex-Ante Regulation of Systemically Significant Digital Enterprises: A Legal Appraisal of India's Draft Digital Competition Bill vs. the EU's Digital Markets Act

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ABSTRACT

As platform economies grow increasingly concentrated, competition law struggles to keep pace with the emergence of 'Big Tech' companies. Traditional ex-post enforcement measures are increasingly seen by regulators worldwide as too slow. This paper presents a legal appraisal of India's draft Digital Competition Bill, focusing on its proposals for identifying Systemically Significant Digital Enterprises within the country's digital market, and compares it with the European Union's Digital Markets Act, 2022. Both frameworks adopt a proactive, forward-looking approach to controlling anti-competitive conduct by major technology firms. Still, the analysis reveals significant differences between the two in the designation of companies, the obligations imposed on them, and the rules of enforcement, differences that reflect distinct economic priorities. The European Union framework targets gatekeepers, that is, large technology platforms that control crucial online services, on the basis of their market position and the risk of anti-competitive behaviour, whereas India's Digital Competition Bill focuses on preventing broader harms to the digital ecosystem. The paper suggests that although the Competition Act can deal effectively with unfair practices, a more flexible, rule-based regulatory framework would better equip authorities to handle market unpredictability, legal challenges and procedural delays, ultimately fostering fairer competition. It concludes with a series of recommendations aimed at strengthening the design of India's digital competition framework.

Keywords: *Systemically Significant Digital Enterprises, Draft Digital Competition Bill, Competition Act, Anti-Competitive Agreements, Ex-Ante Regulation, Digital Markets Act*

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I. Introduction

This paper focuses on the paradigm shift in the antitrust framework from ex-post to ex-ante enforcement mechanisms to tackle anti-competitive practices in concentrated digital platform economies. In discussing the Indian framework, it reflects upon the reform process that takes competition law from the Competition Act, 2002 to the Competition (Amendment) Act, 2023 and the draft Digital Competition Bill, 2024 (hereinafter "DCB"), which has not yet been introduced in Parliament. In doing so, it seeks to explain why ex-post measures have failed to regulate the market-beating practices of Big Tech, especially in the context of market tipping, data dominance, network effects, and procedural delay in establishing abuse of dominance. It traces the legal developments, task forces and parliamentary discussions on competition law reform, including the Raghavan Committee on Competition Law, the Competition Law Review Committee, the 53rd Report of the Standing Committee on Finance, and the Committee on Digital Competition Law. In this regard, it also provides an insight into the design of the new institutional framework for Systemically Important Digital Intermediaries, including the Deal Value Threshold and Digital Markets Units. The paper then compares India's DCB with the EU's Digital Markets Act, 2022 (hereinafter "DMA"), discussing the differences in the procedural enforcement mechanism, the screening process and the deterrence strategy. It also highlights the significance of India's level-playing-field approach vis-à-vis the tilted approach of the EU, and offers recommendations for the future, including a nuanced approach to Big Tech, avoidance of a full-scale adoption of the European regulatory model given the price sensitivity of the Indian economy, and the need for enhanced regulatory coordination between the CCI and the European Commission.

II. Competition law in India

The introduction of the New Economic Policy in 1991 marks the beginning of the opening of the Indian market. Economic reforms turned towards the deregulation of various industries and encouraged competition among market participants. Subsequently, in 1999, the High Level Committee on Competition Policy and Law was established under the chairmanship of S.V.S. Raghavan, and is also known as the Raghavan Committee.[1] The Raghavan Committee was constituted to examine the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter "MRTP Act") and to propose a modern competition law.[2] The Committee submitted its report in 2000, identifying the MRTP Act as outdated, ineffective in promoting competition in India,

[1] Department of Company Affairs, Ministry of Law, Justice and Company Affairs, Government of India, Order No. 1/9/99-CL-V (Oct. 25, 1999).
[2] The Monopolies and Restrictive Trade Practices Act, 1969, § 1(1), No. 54, Acts of Parliament, 1969 (India).

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and incapable of addressing new forms of restrictive trade practices. According to the findings of the Raghavan Committee Report, radical changes were required to align India's competition law with new economic policies and international trends.[3] Following the recommendations of the Raghavan Committee, the MRTP Act was repealed, and the Competition Act, 2002 came into force to prevent practices having an appreciable adverse effect on competition[4] (hereinafter "AAEC"), to promote and sustain competition in markets, to protect the interests of consumers, and to ensure freedom of trade carried on by other participants in markets in India. The Competition Act established the Competition Commission of India (hereinafter "CCI") and the Competition Appellate Tribunal, whose functions were later transferred to the National Company Law Appellate Tribunal (hereinafter "NCLAT"). With regard to antitrust issues, the Competition Act follows an ex-post approach to anti-competitive agreements[5] (hereinafter "ACA") under Section 3 and to abuse of dominance under Section 4 of the Competition Act. Notably, the Competition Act does not prohibit the creation of dominance but focuses on the abuse of a dominant position by large firms. The competition law framework must continually evolve to keep up with the digitalisation of the economy and the growing ability of firms to create anti-competitive barriers. Digital markets are characterised by enhanced network effects, leading to a winner-takes-all paradigm. As the modern economy progressed, the Competition (Amendment) Act, 2023[6] was introduced to tighten the law around large business deals, regulating global mergers through deal value thresholds (hereinafter "DVT") and introducing new settlement and commitment processes. However, both the 2002 and the 2023 frameworks exhibit structural deficiencies in addressing, through ex-post enforcement, the challenges generated by Big Tech. Under the present frameworks, antitrust investigations are slow and reactive, and can allow large technology firms to push out smaller competitors and alter market dynamics irreversibly long before a final CCI ruling is issued. Moreover, the assessment of dominance and the determination of a relevant market in the case of a digital enterprise present a complex task, and the network effects, data assets and multi-sided nature of digital enterprises further compound the issue. India took a major step forward by releasing the draft DCB, which proposes ex-ante regulation of Systemically Significant Digital Enterprises (hereinafter "SSDEs") to ensure that competition law is not violated, marking a paradigm shift from the liberalisation of the market to digital gatekeeping. These dominant firms in India are currently

[3] HIGH LEVEL COMMITTEE ON COMPETITION POLICY AND LAW, GOVERNMENT OF INDIA, *Report of the High Level Committee on Competition Policy and Law* (2000).
[4] The Competition Act, 2002, § 3(1), No. 12, Acts of Parliament, 2003 (India).
[5] *Id.* § 3.
[6] The Competition (Amendment) Act, 2023, No. 9, Acts of Parliament, 2023 (India).

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governed by multiple laws, including the Information Technology Rules,[7] the FDI Policy,[8] the Consumer Protection Act,[9] the Digital Personal Data Protection Act,[10] the E-Commerce Rules,[11] and others.

III. LIMITATIONS OF EX-POST COMPETITION LAW

Arora and Manohar argue that the ex-post model of competition enforcement, which acts only after anti-competitive conduct has occurred, was designed before the digital economy and sits poorly with markets marked by multi-sided platforms, network effects, lock-in effects, zero-price services and significant access to consumer data, features that complicate both the definition of the relevant market and the assessment of dominance.[12] On their account, the time that investigation and multi-stage adjudication take allows a market to tip in favour of an entrenched platform before any remedy is ordered.[13]

Several cases illustrate these shortcomings. In *Competition Commission of India v. Bharti Airtel Ltd.*, the Supreme Court ruled that the CCI could not proceed with an investigation in the telecom sector until the Telecom Regulatory Authority of India had first determined the jurisdictional facts.[14] This dependence on sector-specific regulators can delay antitrust action, allowing anti-competitive conduct to persist. Similarly, where an informant alleged that the algorithmic pricing of the ride-hailing platforms Ola and Uber facilitated price fixing among drivers, the CCI found no case of collusion, and the Supreme Court in *Samir Agrawal v. Competition Commission of India* declined to interfere with the concurrent findings that the platforms did not facilitate cartelisation among drivers; in the same way, the CCI closed its inquiry into the sharp rise in airline fares during the 2016 Jat agitation after the investigation found no price parallelism and no evidence of collusion through the airlines' pricing algorithms.[15] The case illustrates how difficult it is to establish tacit coordination or algorithmic price alignment under an agreement-based, ex-post framework where no direct communication

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[7] The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E) (Feb. 25, 2021) (India), *amended by* the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026, G.S.R. 120(E) (Feb. 10, 2026) (India).

[8] DEPARTMENT FOR PROMOTION OF INDUSTRY AND INTERNAL TRADE, MINISTRY OF COMMERCE AND INDUSTRY, *Consolidated FDI Policy* (effective Oct. 15, 2020).

[9] The Consumer Protection Act, 2019, No. 35, Acts of Parliament, 2019 (India).

[10] The Digital Personal Data Protection Act, 2023, No. 22, Acts of Parliament, 2023 (India).

[11] The Consumer Protection (E-Commerce) Rules, 2020, G.S.R. 462(E) (July 23, 2020) (India).

[12] Pallavi Arora & Jyotsna Manohar, *Ex-Ante Competition Regulation of Digital Markets: Rethinking Regulatory Autonomy under the GATS Non-Discrimination Obligation*, 4 J.L. MKT. & INNOVATION 89, 94 (2025), https://doi.org/10.13135/2785-7867/11806.

[13] Arora & Manohar, *supra* note 12, at 95.

[14] *Competition Comm'n of India v. Bharti Airtel Ltd.*, (2019) 2 SCC 521 (India).

[15] *Samir Agrawal v. Competition Comm'n of India*, (2021) 3 SCC 136, ¶ 23 (India); *Shikha Roy v. Jet Airways (India) Ltd.*, Case No. 32 of 2016, ¶¶ 28–35 (CCI June 3, 2021) (India).

exists. The *Google Android* case shows the pace of current enforcement: the information was filed in 2018, the CCI's final order came only in October 2022, and the appeal was decided by the NCLAT in March 2023, by which time the ecosystem of a dominant firm often becomes deeply entrenched.[16] Such delays reveal the inability of retrospective enforcement to prevent irreversible market distortions. Given these challenges, especially the lack of tools to manage market tipping proactively, India has been considering ex-ante regulation, such as the draft DCB, to set clear rules for dominant digital platforms before harm occurs.

IV. The Competition Law Review Committee and its recommendations

After years of implementing the Competition Act, the Ministry of Corporate Affairs established the Competition Law Review Committee (hereinafter "CLRC") to evaluate India's competition regime and recommend updates to its core legal and procedural provisions. The CLRC submitted its report in 2019, outlining proposals to align India's competition framework with international best practices. The Committee also examined emerging issues relating to digital markets and big data. At the time of the review, global models of ex-ante regulation were either purely conceptual or at a nascent stage of implementation. Recognising that India's digital economy was still developing, the CLRC cautioned against immediate legislative changes to regulate digital firms, instead advocating continued monitoring of global developments and their potential implications for Indian policy.[17] For example, the Committee considered whether Section 19(4) of the Competition Act, which lists the factors for determining dominance, should be amended to include 'control over data' or 'network effects' expressly. It concluded, however, that the existing provision was sufficiently broad and inclusive to accommodate such factors without a statutory amendment.[18]

V. The 53rd Parliamentary Standing Committee's report on 'Anti-Competitive Practices by Big Tech Companies'

Numerous complaints against large digital companies have been made by various individuals and entities before the CCI. A number of industry associations and trade unions have also reportedly complained against these dominant firms in other forums about anti-competitive agreements, exploitative unilateral decisions, and abuses of consumer rights. In this context, the

[16] *Umar Javeed v. Google LLC*, Case No. 39 of 2018 (CCI Oct. 20, 2022) (India); *Google LLC v. Competition Comm'n of India*, Competition App. (AT) No. 01 of 2023, 2023 SCC OnLine NCLAT 147 (NCLAT Mar. 29, 2023) (India).

[17] Ministry of Corporate Affairs, Government of India, *Report of the Competition Law Review Committee* (2019).

[18] *Id.* at 157–58.

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53rd Report on 'Anti-Competitive Practices by Big Tech Companies'[19] of the Parliamentary Standing Committee on Finance was presented to the Lok Sabha on 22 December 2022. The report identified ten anti-competitive practices by which large digital companies leverage their dominant position in the digital space: anti-steering provisions; platform neutrality / self-preferencing; adjacency / bundling and tying; data usage (use of non-public data); pricing / deep discounting; exclusive tie-ups; search and ranking preferencing; restricting third-party applications; advertising policies; and acquisitions and mergers. The Committee on Digital Competition Law later recommended that the practice relating to mergers and acquisitions be left out of the draft DCB, since merger control had already been strengthened by the Competition (Amendment) Act, 2023, which introduced a DVT for notifying mergers and acquisitions to the CCI; only the first nine practices are therefore discussed in this section.[20] The Standing Committee recommended identifying such large digital companies as 'Systemically Important Digital Intermediaries' on the basis of their revenue, market capitalisation, and number of business and end users; the enactment of a 'Digital Competition Act' to ensure contestability in digital markets; and the creation of a 'Digital Markets Unit' within the CCI to monitor such intermediaries closely and advise the Ministry of Corporate Affairs on their designation.[21] The report thus acted as a direct impetus for the DCB.

A. Anti-steering

Online platform services, especially in app distribution, often impose restrictions that prevent users and developers from accessing or promoting third-party services that offer better value or functionality. These practices limit consumer choice and hinder developers from directing users to alternative platforms, thereby reinforcing the dominance of the incumbent ecosystem. In the *Google Play Store* case, the CCI imposed a penalty of ₹936.44 crore on Google for abusing its dominant position through its Play Store policies.[22] The Commission held that mandating the exclusive use of Google Play's Billing System for paid app downloads and in-app purchases, while restricting app developers from embedding direct links or steering users to alternative, cheaper external payment channels, constituted unlawful anti-steering provisions and unfair trading conditions under Section 4 of the Competition Act, 2002. On appeal, the NCLAT in March 2025 upheld the findings under Sections 4(2)(a)(i) and 4(2)(e) and the direction against

[19] STANDING COMMITTEE ON FINANCE (2022–23), SEVENTEENTH LOK SABHA, *Anti-Competitive Practices by Big Tech Companies*, Fifty-Third Report (Dec. 22, 2022) (India).
[20] MINISTRY OF CORPORATE AFFAIRS, GOVERNMENT OF INDIA, *Report of the Committee on Digital Competition Law* 110 (Feb. 27, 2024) [hereinafter *CDCL Report*], https://prsindia.org/files/parliamentry-announcement/2024-04-15/CDCL-Report-20240312.pdf.
[21] *CDCL Report*, *supra* note 20, at 28.
[22] *XYZ v. Alphabet Inc.*, Case No. 07 of 2020, 2022 SCC OnLine CCI 63 (CCI Oct. 25, 2022) (India).

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anti-steering provisions, but set aside other findings and reduced the penalty to about ₹216.69 crore.[23]

B. Platform neutrality and self-preferencing

Platform neutrality is one of the latest topics of public debate in the realm of online platforms. Tim Wu, who first introduced the idea of network neutrality, considered that the source of the problems was the vertical integration of the telecommunications industry. He argued that whenever one entity controls different levels of one sector, conflicts of interest are unavoidable. The same logic applies to platforms, and is known as platform neutrality.[24] A platform may, for instance, adjust its search algorithms to boost the visibility of its in-house offerings, drawing more traffic and sales. Such actions violate the principle of platform neutrality, which demands equal treatment for all businesses using the platform, and create a conflict of interest because of the dual role played by the firm. The landmark *Google Shopping* case[25] established that a dominant platform engaging in self-preferencing by favouring its own downstream services over those of rivals violates traditional competition rules. However, the multi-year litigation, which ended only when the Court of Justice upheld the General Court's judgment in September 2024, exposed major enforcement delays and showed that traditional reactive rules are too slow for fast-moving digital markets, driving the need for proactive, market-shaping ex-ante regulation such as the DMA.

C. Adjacency, bundling and tying

Digital services are frequently integrated with complementary hardware or software, enhancing overall functionality. SSDEs may bundle their primary products with additional services, offering them as a single package. While convenient, this practice reduces consumer options and disadvantages smaller competitors. It also enables large companies to extend their reach into adjacent markets, consolidating their overall market position.[26] The Supreme Court has emphasised that evaluating abuse in adjacent or distinct input segments requires a rigorous

[23] *Alphabet Inc. v. Competition Comm'n of India*, Competition App. (AT) No. 04 of 2023, ¶¶ 106–07 (NCLAT Mar. 28, 2025) (India).
[24] Sarab Lamba & Ramkrishna Panigrahi, *Platform Neutrality: An Ignored Manipulation of Antitrust*, THE CONTEMPORARY LAW FORUM (June 10, 2020), https://tclf.in/2020/06/10/platform-neutrality-an-ignored-manipulation-of-anti-trust/.
[25] Case T-612/17, *Google LLC & Alphabet Inc. v. European Comm'n*, ECLI:EU:T:2021:763 (Nov. 10, 2021), *aff'd*, Case C-48/22 P, *Google LLC & Alphabet Inc. v. European Comm'n*, ECLI:EU:C:2024:726 (Sept. 10, 2024).
[26] Patrick Rey, Paul Seabright & Jean Tirole, *The Activities of a Monopoly Firm in Adjacent Competitive Markets: Economic Consequences and Implications for Competition Policy* (Inst. d'Économie Industrielle, Working Paper No. 132, 2001).

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effects-based analysis to confirm actual foreclosure of competition in the tied or adjacent stream.[27]

D. Data usage and use of non-public data

Large platforms collect and analyse vast volumes of user data to refine their products and maintain a competitive edge. The resulting network effects generate a continuous flow of new users and data, reinforcing a self-sustaining cycle of dominance. However, the accumulation and potential commercialisation of personal data raise privacy concerns and create high entry barriers for smaller firms, distorting fair competition. *Harshita Chawla v. WhatsApp Inc.*[28] is a significant order of the CCI on this question. The case centred on whether WhatsApp abused its dominant position by integrating its payment feature, WhatsApp Pay, directly into its smartphone messaging application. The CCI found that the informant had made no concrete allegation and supplied no specific information to show how the data held by WhatsApp and Facebook harmed competition in India, and it closed the case, dismissing the allegations of data misuse and of abuse through the pre-installation of WhatsApp Pay. Commentators have cited the case as an example of why India's Competition Act is ill-equipped to handle Big Tech ecosystems, arguing that it exposed procedural and conceptual "blind spots" and highlighted the need for a modern digital competition law.

E. Deep discounting

Deep discounting is a business practice in which a company sells merchandise at prices below cost, often heavily subsidised by investors; it is not explicitly prohibited by competition law so long as the firm engaging in it does not hold a dominant market position. Traditional competition laws are inadequate to tackle the issue, as laws such as India's Competition Act are equipped to address such conduct only by firms with a dominant market position; e-commerce marketplaces, however, often employ a structure in which operations are segmented between affiliated sellers, circumventing direct competition with other sellers on the platform, and leverage discounts backed by extensive foreign investment to crowd out smaller competitors. In *Delhi Vyapar Mahasangh v. Flipkart Internet Private Limited*,[29] in which the CCI directed an investigation into Flipkart and Amazon, the traders' association alleged that these e-commerce sites entered into exclusive partnerships with specific sellers, boosted those sellers through preferential listing, and created conditions in which deep discounts could be offered to

[27] *Competition Comm'n of India v. Schott Glass India Pvt. Ltd.*, 2025 INSC 668 (India).
[28] *Harshita Chawla v. WhatsApp Inc.*, Case No. 15 of 2020, ¶¶ 101, 103 (CCI Aug. 18, 2020) (India).
[29] *Delhi Vyapar Mahasangh v. Flipkart Internet Pvt. Ltd.*, Case No. 40 of 2019, 2020 SCC OnLine CCI 4 (CCI Jan. 13, 2020) (India).

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consumers through subsidised operations that smaller third-party sellers could not afford. The platforms challenged the order directing the investigation, and the Karnataka High Court dismissed their writ petitions only in June 2021, so that the inquiry was held up for well over a year before it could proceed.[30] Commentators and policymakers have pointed to this experience in arguing that practices by which a firm shapes the wider market structure are difficult to categorise as unfair or anti-competitive under the Act, and in calling for specific digital competition laws to govern such practices by Big Tech multinationals.

F. Exclusive tie-ups

An exclusive tie-up is a vertical agreement in which a buyer enters into exclusive agreements with vendors or service providers, preventing them from partnering with competitors. These arrangements fall into two categories: those that grant sole access to a product on a platform, and those that allow only one brand within a specific product category, limiting consumer choice and restricting market access for others. In *All India Tyre Dealers' Federation v. Tyre Manufacturers*, the CCI examined a tyre dealers' complaint that the major domestic tyre manufacturers had engaged in parallel pricing and had restricted production and supply. The case highlighted the difficulty of proving coordination among a small pool of dominant suppliers acting through a common industry association. The CCI nevertheless declined to penalise the manufacturers or their association, holding that the evidence did not prove that they had acted together to limit production and control the price of tyres.[31] The Competition Act does not address implicitly coordinated interactions among market participants, which are widespread in oligopolistic markets. Competition authorities should therefore use more sophisticated frameworks to distinguish legitimate from anti-competitive vertical restraints. Updated competition rules are needed to monitor the growing complexity of commercial relationships, including the indirect communication of vertical restraints through trade associations and digital platforms, and to explore new competition issues in consolidated markets.

G. Search and ranking preferencing

Search and ranking preferencing arises when an SSDE exploits its dominant position by distorting search results to favour its own products and services over those of its competitors. In other words, it is a type of self-preferencing. The *Google Shopping* case is the first major

[30] *Amazon Seller Servs. Pvt. Ltd. v. Competition Comm'n of India*, W.P. No. 3363 of 2020 (Kar. H.C. June 11, 2021) (India).
[31] *All India Tyre Dealers' Fed'n v. Tyre Mfrs.*, RTPE No. 20 of 2008, 2013 Comp LR 92, ¶¶ 365–66 (CCI Oct. 30, 2012) (India).

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instance of self-preferencing, in which the European Commission fined Google €2.42 billion for abusing its dominant position by displaying its own comparison shopping service at the top of its general search results while demoting competing shopping services.[32] Such conduct by a search engine creates a need for a new ex-ante framework, of which the European Union's DMA is a prime example. The DMA shifts the burden from courts and competition authorities, which follow an ex-post approach, to individual gatekeeper firms by prohibiting certain conduct per se. Self-preferencing and ranking manipulation by large digital platforms will therefore no longer be tolerated, as they are explicitly prohibited under the new regulation.

H. Restricting third-party applications

The explosive rise of the digital economy has created a situation in which a large technology platform can exploit its dominant position to exclude alternative platforms. This creates a need for updated ex-ante competition laws. Large platforms can use their control of closed ecosystems, restrictive application programming interfaces, and app store policies to stifle competition from independent applications, including by curbing the installation of third-party applications.[33] Proceedings under the DMA in Europe and before India's CCI have examined allegations that technology giants use their dominance to promote their own apps over functionally superior alternatives. In addition, gatekeepers may leverage their data advantages to lock in users, denying other firms access to their data while using the same information to cross-promote their own products and services. Such conduct creates an environment in which consumers are locked into a single platform because switching would cause significant inconvenience. Competition laws should be updated to require "open systems" expressly, to prohibit the abuse of ecosystem dominance by Big Tech firms, and to require data portability and interoperability of their services. The framework of the draft DCB is designed to keep digital markets free from such abuse: by mandating openness and preventing anti-competitive vertical integration, it seeks to promote healthy competition and allow the most innovative products and services to succeed.[34]

I. Advertising policies

Dominant digital platforms may exert extensive control over the digital advertising ecosystem, managing demand, supply and ad exchanges. This concentration strengthens their dominance and creates uneven conditions. These enterprises often require advertisers to use

[32] Case AT.39740, *Google Search (Shopping)*, Comm'n Decision C(2017) 4444 final (June 27, 2017).
[33] *See CDCL Report*, *supra* note 20, at 38–39.
[34] Draft Digital Competition Bill, 2024, § 13 (India), *reprinted in CDCL Report*, *supra* note 20, annex IV, at 151 [hereinafter Draft DCB].

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automated tools that extract consumer data from websites, enabling highly targeted advertisements. At the same time, dominant platforms with major search engines or app stores may restrict third-party apps from advertising on their services, citing vague justifications, thereby limiting competitors' ability to reach users.[35] The systemic vulnerabilities of ex-post enforcement are demonstrated in the disputes before the CCI involving the Alliance of Digital India Foundation, whose complaint alleged that Google leverages its multi-layered AdTech stack, spanning Google Ads to its display programmatic exchange, to impose unfair and discriminatory conditions on domestic advertisers and publishers. Because the Competition Act requires prolonged investigation to prove an abuse of dominance and market foreclosure, the regulatory process has stretched across several years, during which Google's position in advertising monetisation has remained under investigation rather than subject to clear rules. In August 2025, the CCI clubbed the AdTech allegations with earlier complaints already under investigation and closed the allegations on Google Ads policies under Section 26(2A), as matters already decided in its previous orders.[36] This procedural friction, involving merged complaints and protracted proceedings, suggests that reactive enforcement is structurally too slow to safeguard competition in fast-moving digital advertising markets. Such regulatory lag makes a powerful case for a shift towards ex-ante competition law. Rather than waiting for a digital platform to execute exclusionary advertising policies, an ex-ante framework establishes behavioural rules in advance.

VI. THE COMMITTEE ON DIGITAL COMPETITION LAW AND ITS MANDATE

The Standing Committee played a pivotal role in the formation of the Committee on Digital Competition Law (hereinafter "CDCL"). It highlighted significant anti-competitive behaviour by Big Tech firms and advocated proactive, ex-ante regulatory measures to address these issues promptly. In response, the Ministry of Corporate Affairs established the CDCL with a clear mandate relating to a specialised digital competition law. The Committee was required to:[37]

1. review whether the existing provisions of the Competition Act, along with the rules and regulations framed under it, are sufficient to deal with the challenges arising from the digital economy;

[35] *See generally* F. Dorri, *The Relationship between Competition Laws and Advertising Policies*, 3 VIDYABHARTI INT'L INTERDISC. RSCH. J. 63–67 (2014).
[36] *Alliance of Digital India Found. v. Alphabet Inc.*, Case No. 23(1) of 2024, ¶¶ 33–34 (CCI Aug. 1, 2025) (India) (allegations on online display advertising clubbed with Case Nos. 41 of 2021, 10 of 2022, 36 of 2022 and 34 of 2024 for investigation); *Alliance of Digital India Found. v. Alphabet Inc.*, Case No. 23(2) of 2024, ¶¶ 31–32 (CCI Aug. 1, 2025) (India) (allegations on Google Ads policies closed under section 26(2A)).
[37] *CDCL Report*, *supra* note 20, at 28–29.

2. examine the need for an ex-ante regulatory mechanism for digital markets through separate legislation;
3. study international best practices on the regulation of digital markets;
4. study other regulatory regimes, institutional mechanisms and government policies relating to competition in digital markets;
5. study the practices of leading players or Systemically Important Digital Intermediaries that limit, or have the potential to cause harm to, competition in digital markets; and
6. study any other matters relating to competition in digital markets that the Committee considered relevant.

VII. Draft Digital Competition Bill, 2024

In 2024, the CDCL submitted its report to the Ministry of Corporate Affairs, and the Ministry released the report and the draft Bill for public and stakeholder comments on 12 March 2024.[38] The Bill has not been introduced in Parliament. After the consultation, the Ministry decided to adopt "an evidence-based and adaptive approach in finalising the Draft Digital Competition Bill" and to commission a market study on the Bill's qualitative and quantitative thresholds, its list of core digital services, and its likely impact on competition, start-ups and MSMEs; the request for proposals for the study was floated in November 2025.[39] The proposed DCB seeks to identify SSDEs and to regulate their practices in relation to Core Digital Services (hereinafter "CDS"), with a view to fostering innovation, promoting competition, and protecting the interests of users in India. It aims to supplement the Competition Act by introducing ex-ante measures to prevent anti-competitive conduct, instead of relying solely on ex-post enforcement. In relation to digital markets, the CLRC Report had recognised that the scope of Section 3 of the Competition Act needed to be widened to capture all forms of anti-competitive restraints and agreements, including those specific to digital markets, which may not be covered by Section 3. Its recommendation to amend Section 3(4) of the Competition Act to capture 'other agreements' was accepted and implemented through the Competition (Amendment) Act, 2023.[40] The DCB imposes several ex-ante obligations on SSDEs, including fair and transparent dealing with end users and business users; no self-preferencing; no anti-steering practices;

[38] *CDCL Report*, *supra* note 20; Draft DCB, *supra* note 34.
[39] Standing Committee on Finance (2025–26), Eighteenth Lok Sabha, *Action Taken by the Government on the Observations/Recommendations Contained in the Twenty-Fifth Report (Eighteenth Lok Sabha) on 'Evolving Role of Competition Commission of India in the Economy, Particularly the Digital Landscape'*, Thirty-Seventh Report 3–4 (Aug. 10, 2026) (India).
[40] *CDCL Report*, *supra* note 20, at 25.

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limitations on the use and cross-use of personal data; default options; a right to data portability; and no tying and bundling. While the DCB is guided by the principles of fairness, contestability and transparency, specific rules and obligations for SSDEs are prescribed in various provisions. Its key features are discussed below.

A. Shift from ex-post to ex-ante regulation

The Competition Act, like competition laws globally, has predominantly relied on the ex-post approach, under which the CCI can act against anti-competitive agreements or abuse of a dominant position only after the event. The process involves lengthy market studies and investigation before any conclusion is reached. During these proceedings, smaller firms are often pushed out of the market by dominant firms, leaving the CCI little scope to restore competition. Digital markets are characterised by network effects, in which a product becomes more valuable as it gains users; by high barriers to entry for new firms owing to the data-intensive nature of such markets; and by economies of scale and scope, which allow a single firm to dominate the market. The ex-ante approach addresses these issues by laying down bright-line conduct rules for dominant digital firms in advance to prevent anti-competitive conduct, instead of acting against such firms after the event.[41]

B. Determination of Systemically Significant Digital Enterprises

Not all firms are captured by the ex-ante approach; only SSDEs are required to follow the mandatory conduct rules. SSDEs are essentially gatekeepers or critical digital infrastructure in the economy. There is a two-step process, quantitative and then qualitative, to determine whether an enterprise qualifies as an SSDE. Under the financial and user thresholds, an enterprise providing a CDS is deemed to be an SSDE if, in each of the three preceding financial years, it meets any one of the financial thresholds (turnover in India, global turnover, gross merchandise value in India, or global market capitalisation) and either of the user thresholds (one crore end users or ten thousand business users in India) for that service. The CDS are listed in the Bill's first schedule, which may be amended from time to time, and include online search engines, online social networking services, video-sharing platform services, interpersonal communications services, operating systems, web browsers, cloud services, advertising services, and online intermediation services.[42] Once a firm is designated, it must abide by the

[41] Mahendra Kumar & Ranjan Kumar, *Competition in Digital Markets in India and the Proposed Ex-Ante Regulatory Framework: A Legal Analysis of the Draft Competition Bill, 2024*, 6 CAHIERS MAGELLANES-NS 4894, 4894–95 (2024).

[42] Draft DCB, *supra* note 34, § 3(2), sch. I; Puja Tiwari & Shivi Gupta, *Regulation of Enterprises in Core Digital Service Areas: Analysing the Draft Digital Competition Bill*, MONDAQ (Apr. 23, 2024), https://www.mondaq.com/india/antitrust-eu-competition/1455200/regulation-of-enterprises-in-core-digital-service-areas-analysing-the-draft-digital-competition-bill.

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conduct rules and obligations. Big Tech firms leverage their financial strength and presence in diverse markets to capture the digital touchpoints of Indian consumers, and are identified as critical digital infrastructure on which other firms depend. The regulation targets these firms rather than overburdening the ecosystem of start-ups. Firms such as Meta (which owns WhatsApp and Instagram), Alphabet (Google Search, Android OS) and Amazon are examples of such digital gatekeepers. Given their very high number of users and market value, these firms would be likely to meet the financial thresholds; since they also operate core digital services such as interpersonal communications services (WhatsApp) and online intermediation services (Google Play Store), they would qualify in respect of those services. Such Big Tech firms would therefore have to follow the ex-ante rules, while small start-ups would not.

C. Core ex-ante obligations under the framework

The ex-ante approach subjects identified SSDEs to various bright-line prohibitions. The first key behavioural prohibition concerns anti-steering practices. One of the major anti-competitive practices of SSDEs is to prevent or restrict business users from dealing with consumers on alternative platforms to sell goods or services. Ex-ante prohibitions apply to such practices; for instance, an app store is prohibited from stopping a business user from informing consumers that cheaper subscription plans are available on the developer's website. The second key prohibition is on self-preferencing. SSDEs typically function both as a marketplace and as participants in it; as participants, they offer products and services similar to those they facilitate for other businesses, and so tend to promote their own products and services over others on a preferential basis. Ex-ante prohibitions bar such self-preferencing; for instance, an e-commerce marketplace will not be able to place its private-label products ahead of similar products in its search results. Third come data walls and cross-use restrictions. SSDEs collect vast amounts of personal and non-personal data across various business verticals. Ex-ante prohibitions prevent such entities from combining personal data collected through one CDS with personal data collected through other services without the consumer's consent; for instance, a firm cannot use a consumer's private chat data to show targeted advertisements on another service provided by the same entity. Fourth come anti-tying and bundling rules. SSDEs may tie access to one service to another service without consumer consent, and ex-ante prohibitions prevent them from mandatorily bundling or tying services; for instance, a marketplace cannot force a business user to use its in-house logistics services in order to list products on the marketplace. The ex-ante framework also includes obligations relating to interoperability and data portability to reduce switching costs between platforms. Interoperability requires that third-party software be compatible with the operating systems or hardware of SSDEs, and consumers will be able to

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port their data between digital services easily, reducing switching costs. Dominant app stores charge high commissions (15 to 30 per cent) on digital purchases and prohibit developers from informing consumers directly about cheaper subscriptions, forcing payments through the app store. This issue was highlighted in the dispute between Google and Indian app developers over the use of the Play Store for in-app payments. The ex-ante prohibitions prevent such anti-steering practices by app stores and enable developers to inform consumers about cheaper subscription plans. Consumers would benefit from lower subscription fees on their phone applications, and Indian app developers would retain higher profits as they would pay lower commissions to app stores.[43]

D. The regulatory machinery: the Competition (Amendment) Act and the Digital Competition Bill

The DCB is one way of introducing ex-ante regulation. It imposes obligations on digital gatekeepers from the outset and bans their anti-competitive behaviour, including anti-steering practices. The Competition (Amendment) Act, 2023 brings global turnover into the CCI's penalty powers. Previously, the Commission could use only the relevant turnover of a particular product line, branch or market in imposing penalties. The CCI can now punish anti-competitive behaviour more effectively, since global turnover includes the complete revenues from the firm's activities, which may amount to several billion dollars. Moreover, penalties are to be imposed in accordance with the degree of infringement and the offending party's overall turnover. Taken together, the amendments to the Competition Act and the provisions of the DCB on structural prohibitions would support the effective regulation of digital monopolies and the protection of consumers' interests.

The CCI investigation into Amazon and Flipkart concerns allegations that these firms gave preferential treatment, including better visibility, to certain preferred sellers and to their private labels. An ex-ante prohibition would remove the need for the CCI to conduct extensive investigations to prove that Amazon or Flipkart promote private labels on their marketplaces by tweaking search algorithms.[44] Ex-ante rules would require these firms to treat, for example, independent fashion retailers and their own private-label clothing brands equally in terms of visibility in search results and listing fees. In addition, the algorithms of such firms should be

[43] Dhruv Soni, *Ex-Ante Measures to Regulate Competition in the Digital Markets: Analysing the Report of the Committee on Digital Competition Law*, MANUPATRA ARTICLES (July 19, 2024), https://articles.manupatra.com/article-details/Ex-Ante-Measures-to-Regulate-Competition-in-the-Digital-Markets-Analysing-the-Report-of-the-Committee-on-Digital-Competition-Law-2024.

[44] *Delhi Vyapar Mahasangh*, *supra* note 29, ¶¶ 7.2–7.3; *see also* Tanisha Hooda, *India's Draft Digital Competition Bill, 2024: Reforming Digital Markets*, IMPRI INSIGHTS (Aug. 2, 2026), https://www.impriindia.com/insights/policy-update/indias-draft-digital-competition-bill-2024-reforming-digital-markets/.

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designed so that independent retailers can compete effectively on their merits and consumer reviews.

E. Balancing innovation and regulation

There are concerns that the ex-ante approach and the application of bright-line prohibitions would harm innovation and efficiency, especially in relation to bundled digital services or offerings. Critics also argue that the ex-ante approach will dampen foreign trade and investment in India. However, India's proposed ex-ante framework provides flexibility in its application and takes technological change into account. The draft DCB leaves the particulars of each obligation to be specified, and later modified, by the CCI through regulations for each core digital service, in response to changing digital technologies.[45] The CCI also retains its ex-post powers under the Competition Act, which reduces the risk of imposing ex-ante prohibitions where they are not required. For instance, the CCI may decide not to apply an ex-ante prohibition to conduct of a digital marketplace that is needed to update security features or protect consumers. The ex-ante framework thus offers much-needed competition law reform for India, balancing the need to regulate Big Tech firms and promote competition without undermining innovation and efficiency. Big Tech firms collect user data across various fragmented digital services and build user profiles from that data, which other advertising firms cannot replicate. The CCI's case on WhatsApp's 2021 privacy policy concerned the sharing of WhatsApp user data with its parent company, Meta, to enable targeted advertising on Facebook and Instagram. The ex-ante approach ensures that no personal data is shared between different services of the same organisation without the express consent of the user. By creating a 'data wall', it prevents a firm from leveraging user data collected through one service to promote its other services.

VIII. Europe's Digital Markets Act

The Digital Markets Act aims to ensure fair competition in the digital environment.[46] It marks the EU's first regulatory effort specifically targeting the market power of major digital platforms. It works alongside existing competition law and does not replace it. The European Commission proposed the DMA in December 2020; it was adopted on 14 September 2022, published in the Official Journal on 12 October 2022, and entered into force on 1 November 2022. Its provisions began to apply across the EU from 2 May 2023. Within two months of that date, companies offering core platform services were required to inform the Commission

[45] *CDCL Report*, *supra* note 20, at 110.

[46] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on Contestable and Fair Markets in the Digital Sector (Digital Markets Act), 2022 O.J. (L 265) 1 [hereinafter DMA].

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whether they met the quantitative thresholds for designation as gatekeepers, and the Commission then had 45 working days to adopt designation decisions. Gatekeeper status is determined by objective criteria set out in the DMA. Gatekeepers are large online platforms providing essential services such as app stores, search engines or messaging apps. Once designated, they must comply with specific obligations (the "do's") and avoid prohibited practices (the "don'ts"), and they have six months to bring their operations into compliance. The EU regards these firms as systemically important, justifying preventive, ex-ante regulation. Gatekeepers may be companies offering services such as online marketplaces, social networks, cloud computing, operating systems or online advertising, provided they meet the necessary conditions.[47] In September 2023, the Commission designated the first six gatekeepers: Alphabet, Amazon, Apple, ByteDance, Meta and Microsoft; Booking followed in May 2024.[48]

To be designated a gatekeeper, a company must have a strong economic position, a significant impact on the internal market, and activities across multiple EU countries. It must link a large number of business users with a large consumer base and hold an entrenched and durable position in the market. The DMA imposes clear rules on how gatekeepers manage their core platform services. On the positive side, they must enable interoperability where required, give business users access to the data generated through their use of the platform, provide advertisers with tools for independent verification of advertisements, and allow businesses to reach customers outside the platform and promote their services independently. On the restrictive side, gatekeepers cannot rank their own products above competitors' in search results or rankings, block users from accessing services beyond their ecosystem, prevent the uninstallation of pre-installed apps, or use tracking data collected outside their core services for targeted advertising without explicit user consent. These changes are expected to benefit consumers in several ways: consumers can install apps from sources other than official app stores, choose browsers and search engines more freely through choice screens, gain greater control over how their personal data is used and shared, transfer their data between platforms, use services without a mandatory log-in tied to one provider, and receive search results based on relevance rather than commercial bias. Third parties can report suspected breaches of the DMA to the European Commission or national competition authorities, and claims against gatekeepers can also be pursued before national courts.

[47] EUROPEAN COMMISSION, *About the Digital Markets Act*, https://digital-markets-act.ec.europa.eu/about-dma_en (last visited Aug. 11, 2026).
[48] EUROPEAN COMMISSION, *Gatekeepers*, https://digital-markets-act.ec.europa.eu/gatekeepers_en (last visited Oct. 25, 2026).

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To keep pace with rapid technological and market developments, the Commission carries out market investigations. These support updates to the list of gatekeepers, adjustments to their obligations, and the introduction of corrective measures in cases of continuing violations. Non-compliance carries serious consequences: companies may face fines of up to 10 per cent of total worldwide annual turnover, rising to 20 per cent for repeated infringements. Periodic penalty payments of up to 5 per cent of average daily turnover can be imposed for continuing infringements. In cases of systematic non-compliance, the Commission may impose further remedies tailored to the severity of the issue. As a last resort, and only where necessary, non-financial remedies such as behavioural restrictions or structural changes, including the divestiture of parts of a business, may be considered.

IX. A LEGAL COMPARISON OF INDIA'S PROPOSED DIGITAL COMPETITION BILL AND THE EU DIGITAL MARKETS ACT

A. Enforcement methodology: ex-post vs. ex-ante

The critical difference between the enforcement mechanisms of the DMA and the DCB, on the one hand, and traditional competition law, on the other, is that both dispense with protracted ex-post litigation by introducing ex-ante regulation. Neither the DMA nor the DCB requires competition authorities to define relevant product markets and prove the dominance of particular digital platforms in them. Under the DMA, the need to delineate relevant product markets is removed by regulating core platform services through a specific list of conduct prohibited per se. In a similar vein, the DCB introduces a list of CDS subject to ex-ante intervention. While the EU regulation prohibits particular actions of gatekeepers per se, India's DCB would empower the CCI to adopt detailed regulations for each CDS, giving competition policy the flexibility to respond to rapid innovation in the digital economy.[49]

A key similarity in the regulatory philosophy of the two frameworks is that neither contemplates the protracted litigation typical of antitrust cases. Neither the EU nor the Indian framework requires competition authorities to establish the relevant product market and prove economic dominance in it. However, while the EU's Digital Markets Act is a stand-alone regulation, India's draft DCB would allow the CCI to develop service-specific regulations to address dominance in digital markets.

[49] Vishnu Sharma, *Ex-Ante Overreach? Unpacking India's Regulatory Crossroads in Light of NCLAT's Ruling in* Alphabet Inc. v. CCI, ARB. & CORP. L. REV. (Aug. 1, 2025), https://www.arbitrationcorporatelawreview.com/post/ex-ante-overreach-unpacking-india-s-regulatory-crossroads-in-light-of-nclat-s-ruling-in-alphabet-in.

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B. Substantive conduct obligations: behavioural prohibitions

Both instruments impose direct conduct obligations on designated platforms. On self-preferencing and search ranking, both Article 6(5) of the DMA and the draft DCB prohibit self-preferencing, that is, ranking a platform's own downstream services and products above those of its competitors on its marketplace. On anti-steering, both prohibit practices by SSDEs and gatekeepers designed to prevent business users from bypassing the platforms' app stores or payment systems to conclude transactions on more favourable terms through alternative distribution channels. On data walls and data usage, Article 5(2) of the DMA and the DCB prohibit combining personal data processed through a core service with other personal data processed by the same group of companies without the explicit consent of the data subject; SSDEs are also prohibited from using the non-public commercial data of third parties to develop their own competing downstream services. On interoperability, tying and bundling, both instruments prohibit the tying and bundling of complementary services (for example, logistics or advertising exchanges) and require third-party software interoperability and data portability.

C. Data and interoperability mandates

While the EU regulation imposes strict restrictions on the aggregation of personal data across digital services and requires interoperability, India's proposed rules are more focused on data privacy, while also allowing data to be used for cybersecurity, fraud prevention and other specified needs. Meta, for instance, now lets users in the EU choose whether to keep their Facebook and Instagram accounts linked or to manage them separately, a change it introduced to meet the DMA's requirements.[50] The draft DCB, moreover, applies only to SSDEs, leaving domestic start-ups outside its obligations altogether.

D. Regulatory flexibility, exemptions and sovereign control

The DMA's exemptions for gatekeepers are limited to strictly defined grounds (public health and public security, under Article 10, alongside a suspension where compliance would endanger a gatekeeper's economic viability), are controlled directly by the European Commission, and must be reviewed at least annually. India's proposed DCB, by contrast, gives the Central Government (and not only the CCI) the power to exempt an enterprise from the Bill's obligations in the interest of the security of the State or the public interest, in accordance with India's treaty obligations, or in respect of sovereign functions.[51] This difference reflects India's

[50] Tim Lamb, *Offering People More Choice on How They Can Use Our Services in the EU*, META NEWSROOM (Jan. 22, 2024), https://about.fb.com/news/2024/01/offering-people-more-choice-on-how-they-can-use-our-services-in-the-eu/.

[51] DMA, *supra* note 46, arts. 9–10; *CDCL Report*, *supra* note 20, at 62–63; Draft DCB, *supra* note 34, § 38.

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regulatory preference for balancing openness and control, ensuring that Big Tech does not unfairly discriminate against start-ups, Indian digital public infrastructure, and the digital platforms that give India's small businesses access to the digital economy.

E. Targeted entities and designation: 'gatekeepers' vs. SSDEs

The first step in the application of each instrument is the identification of systemically important digital platforms. Under Article 3 of the DMA, designation as a gatekeeper rests on objective quantitative thresholds: an undertaking providing a core platform service must have an annual Union turnover of at least €7.5 billion in each of the last three financial years, or an average market capitalisation of at least €75 billion in the last financial year, and must provide the same core platform service in at least three Member States to at least 45 million monthly active end users and 10,000 yearly active business users in the Union. The draft DCB introduces the new concept of SSDEs. Under Section 3 of the draft DCB, an enterprise providing a CDS is deemed an SSDE if it meets any of the financial thresholds (turnover, global market capitalisation or gross merchandise value) and has at least one crore end users or ten thousand business users in India. The draft DCB also introduces the concept of Associate Digital Enterprises: the CCI may impose obligations on affiliated enterprises within the group of an SSDE that are involved in the provision of the core digital service, a response to Big Tech's use of data assets across different business lines. While the DMA designates gatekeepers mainly on objective quantitative criteria (turnover or market value and the number of users), Section 3 of the draft DCB, like Article 3(8) of the DMA, allows an enterprise that does not meet the quantitative thresholds to be designated if it has a significant presence in the market.[52]

F. Enforcement, penalties and remedies

The DCB reflects India's desire to regulate Big Tech platforms while protecting its start-up ecosystem, national digital public infrastructure and domestic digital markets. As regards enforcement, the DMA is enforced by the European Commission, whereas in India the DCB would be enforced by the CCI, whose Digital Markets and Data Unit the CDCL recommended strengthening for the purpose. Both instruments impose substantial financial penalties. Under the DMA, a first infringement can attract a fine of up to 10 per cent of worldwide turnover, and repeated infringements up to 20 per cent. Under the draft DCB, an enterprise's failure to comply with its ex-ante obligations can attract a penalty of up to 10 per cent of its global turnover. As for structural and non-financial remedies, the EU can require structural measures, including the divestiture of business lines, in cases of systematic non-compliance with the DMA. In India,

[52] DMA, *supra* note 46, art. 3(2), (8); Draft DCB, *supra* note 34, § 3(2)–(3).

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the CCI can impose cease-and-desist orders, structural remedies and commitments under the Competition Act, 2002. Since the draft DCB also takes the worldwide turnover of the enterprise into account in imposing financial penalties, a breach of the ex-ante obligations would expose an enterprise to penalties large enough to deter violations by Big Tech multinationals.[53]

X. Conclusion and Way Forward

The Competition (Amendment) Act, 2023, together with the proposed DCB in India and the DMA in the European Union, represents a step towards modernising competition law. However, while they share similar themes, their differing approaches suggest a need for nuanced interpretation. Looking ahead, India should not adopt a rigidly uniform approach to the thresholds for identifying SSDEs under the proposed DCB, which could undermine the effectiveness of its competition law in a developing economy as price-sensitive as India. The CCI must retain a degree of flexibility in applying the law, so that innovation markets are not stifled by overly broad notions of contestability. Meanwhile, regulatory fragmentation could damage trade, and formal channels for consultation and data-sharing between the European Commission and the CCI will be critical if both are to enforce competition law effectively against Big Tech firms. Instead of adopting an overly eclectic approach, Indian courts and competition authorities should take a pragmatic view when implementing the DCB. Authorities should ensure that India's competition law reflects "economic reality", avoiding the deterrence of new entrants while remaining able to loosen or waive existing remedies as market conditions change. India's ability to develop an effective digital economy will depend on its ability to enforce competition laws built on a strong evidentiary foundation that protects intellectual property, data privacy and other relevant interests, striking a balance between encouraging innovation and contestability and dismantling the barriers to competition created by Big Tech companies.

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[53] DMA, *supra* note 46, arts. 18, 30–31; Draft DCB, *supra* note 34, § 28(1); *CDCL Report*, *supra* note 20, at 114.

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