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Regulating Digital Market Dominance: Challenges and Prospects for Indian Competition Law

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ABSTRACT

The enforcement of competition law in digital markets poses unique challenges. It requires traditional legal tools to adapt to changing market conditions. Digital platforms function under different economic rules. These often include network effects, data-driven efficiencies, and winner-takes-all situations. These factors complicate how we assess dominance and abuse.

*This paper looks closely at the challenges and opportunities in regulating digital markets under Indian competition law. It focuses particularly on assessing dominance and abusive actions. The 2019 Supreme Court ruling in the Uber case suggested that pricing below cost might indicate dominance. This view conflicts with the Competition Commission of India's (CCI) established guidelines, which warned against such circular reasoning. Additionally, the Supreme Court's comments in *In Re: Updated Terms of Service and Privacy Policy for WhatsApp Users (2021)* highlight the increasing worries about data-driven market power and exploitative behaviour by dominant digital companies. The case shows how unilateral policy changes by tech giants can reinforce their dominance and lead to possibly exploitative practices. These inconsistencies in judicial rulings create legal uncertainty, which undermines the predictability needed for effective enforcement.*

The proposed Digital Competition Bill, 2024, aims to tackle these challenges. It introduces prior regulations specifically for digital markets. It focuses on gatekeeper platforms, data monopolization, and algorithmic collusion. While the bill seeks to improve enforcement against digital dominance, there are concerns about its effect on innovation, regulatory overreach, and market dynamics. This paper points out key unresolved issues in platform regulation. It advocates for a balanced approach through legislative and policy measures to ensure a clear and future-ready competition regime in India.

Keywords: *Digital markets, platform dominance, abuse of dominance, Digital Competition Bill, Indian Competition Law.*

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I. INTRODUCTION

The digital economy has fundamentally transformed market dynamics across the globe, creating new opportunities for innovation while simultaneously raising complex regulatory challenges. Digital markets, characterized by strong network effects, multi-sided platforms, data-driven business models, and algorithmic decision-making, differ significantly from traditional markets, necessitating a re-evaluation of existing competition law frameworks.³ The rise of dominant digital platforms has sparked concerns about potential anti-competitive conduct, including self-preferencing, exclusive agreements, deep discounting, and data monopolization, leading to growing scrutiny from competition regulators worldwide.⁴

In India, the Competition Act, 2002, serves as the primary legal framework for regulating competition. However, given the evolving nature of digital markets, questions arise regarding its adequacy in addressing new-age competition concerns. In response, the Competition Amendment Act, 2023, introduced provisions such as deal-value thresholds for mergers and acquisitions, aimed at capturing potentially anti-competitive transactions that might otherwise escape regulatory scrutiny.⁵ Despite these advancements, significant gaps remain in areas such as algorithmic collusion, platform neutrality, and data governance, necessitating further regulatory intervention.

India's competition enforcement has largely been ex-post, meaning regulators intervene only after anti-competitive behavior has been identified. However, given the rapid expansion of digital platforms and their ability to entrench dominance swiftly, there is a growing debate on the need for ex-ante regulations, which would allow for pre-emptive intervention to prevent market distortions before they occur.⁶ Several jurisdictions have already adopted or proposed such frameworks, including the European Union's Digital Markets Act (DMA), which imposes obligations on "gatekeepers" to ensure fair competition.⁷ Similarly, India's Standing Committee of Parliament on Commerce has recommended a Digital Competition Act (DCA) to strengthen the regulatory framework governing digital platforms.⁸

The challenges associated with regulating digital markets include complexities in market power

³ Crémer, J., de Montjoye, Y.-A., & Schweitzer, H. (2019). *Competition policy for the digital era*. European Commission.

⁴ Khan, L. (2019). *The antitrust paradox in digital markets*. Yale Law Journal, 126(3), 564-635.

⁵ Singh, P. (2023). *The impact of Competition Amendment Act, 2023, on digital market regulation in India*. Indian Journal of Law and Economics, 15(4), 23-48.

⁶ Lok Sabha. (2022). *Report on anti-competitive practices in digital markets*. Parliament of India.

⁷ European Commission. (2022). *Digital Markets Act: Ensuring fair and open digital markets*. Retrieved from <https://ec.europa.eu/digital-markets-act>

⁸ Savesh Mathi. (2023). *Ex-ante regulation and digital competition in India*. Competition Law Journal, 14(1), 78-94.

assessment, algorithmic pricing and collusion, deep discounting and predatory pricing, and exclusive agreements leading to self-preferencing. Unlike traditional markets, where dominance is assessed based on market share and pricing power, digital platforms derive dominance from network effects, data control, and ecosystem entrenchment⁹. This makes defining relevant markets and assessing market power more complex. Additionally, the use of AI and automated pricing algorithms enables firms to engage in tacit collusion, making it difficult for regulators to detect and prove anti-competitive conduct.¹⁰ Many dominant firms engage in sustained deep discounting strategies to eliminate competitors and establish monopolistic control.¹¹ For example, Zomato and Swiggy have operated at losses for years, leveraging financial capital to outcompete smaller firms.¹² Furthermore, dominant platforms often favour their own services over third-party providers, leading to concerns over platform neutrality and unfair competition.¹³

The challenges posed by digital markets have prompted regulators worldwide to explore new enforcement mechanisms. The European Union's DMA imposes strict obligations on dominant digital platforms, preventing them from self-preferencing, restricting interoperability, and exploiting consumer data unfairly. In the United States, the Federal Trade Commission (FTC) has initiated major antitrust actions against Google, Facebook, and Amazon, emphasizing concerns over monopolistic data control and exclusionary practices.¹⁴ In India, the Competition Commission of India (CCI) has intervened in cases involving Google's search bias, Amazon's preferential listings, and MakeMyTrip's online travel dominance, reflecting its growing role in digital competition enforcement.¹⁵ However, given the limitations of ex-post enforcement, there is increasing advocacy for a specialized digital competition law.

This research aims to examine the effectiveness of India's competition law framework in addressing digital market challenges. Specifically, it will analyze the applicability of Section 4 (abuse of dominance) of the Competition Act, 2002, in digital markets, evaluate landmark CCI rulings and their impact on digital market competition, identify regulatory gaps and

⁹ Evans, D. S., & Schmalensee, R. (2016). *Matchmakers: The new economics of multisided platforms*. Harvard Business Review Press.

¹⁰ Mirani, S. (2023). *Algorithmic pricing and collusion in digital markets*. *Indian Economic Review*, 28(2), 112-134.

¹¹ Parsheera, S., et al. (2017). *Digital competition and regulatory challenges*. *Economic and Political Weekly*, 52(35), 22-29.

¹² Etech. (2023). *Financial losses in digital firms: A case study*. Retrieved from <https://www.etech.com>

¹³ Bhattacharya, A. (2022). *Competition law in the digital age: A review of CCI's interventions*. *Journal of Indian Competition Law*, 5(2), 45-67.

¹⁴ Kovacic, W. E., & Hyman, D. A. (2020). *Big Tech and the FTC: Rethinking antitrust enforcement in the digital era*. *Georgetown Law Journal*, 109(1), 1-29.

¹⁵ Mehta, R. (2021). *India's competition law challenges in the digital economy: A policy perspective*. *Competition & Regulation Review*, 10(1), 89-112.

enforcement challenges in tackling anti-competitive behaviour, assess the need for a new Digital Competition Act and its potential implications, compare India's competition law framework with global best practices, including the DMA and US antitrust reforms, and propose policy recommendations for a robust and innovation-friendly digital competition regime.

As digital markets continue to evolve, India's competition law must adapt to effectively regulate digital platforms while promoting innovation and consumer welfare. The introduction of ex-ante regulations, coupled with enhanced enforcement mechanisms and international cooperation, will be critical in addressing emerging digital competition challenges. By examining both domestic and global regulatory trends, this research aims to contribute to the ongoing discourse on digital competition law, advocating for a balanced approach that ensures fair competition without stifling technological advancements.

LITERATURE REVIEW

The article "*Abuse of Dominance in Digital Markets – Contribution from India*" submitted by India under Session II of the Global Forum on Competition, examines the evolving challenges and opportunities in applying Indian competition law to digital markets. It highlights how the digital economy has transformed market dynamics, bringing issues such as data monopolization, network effects, and platform gatekeeping to the forefront. The Competition Commission of India (CCI) has faced complexities in defining relevant markets, assessing abuse of dominance, and designing effective remedies. The document details key cases involving major digital platforms like Google, Amazon, Flipkart, Uber, and WhatsApp, illustrating how the CCI has adapted its enforcement strategies. While India's competition framework is deemed robust, emerging issues such as self-preferencing, deep discounting, and exclusive agreements necessitate continuous legal evolution. The study also emphasizes the importance of market studies and the Competition Law Review Committee's role in refining regulatory approaches to better address challenges in digital markets.

The article titled *The Challenges of Digital Markets for EU Competition Law: The Case of Android* by Francisc I. Toma, critically examines the European Commission's antitrust scrutiny of Google's Android ecosystem, focusing on allegations of abuse of dominance under Article 102 TFEU. The paper highlights how Google's contractual obligations with Original Equipment Manufacturers (OEMs), particularly the requirement to pre-install Google Search and Chrome, raise concerns regarding market foreclosure and competition suppression. Toma discusses the implications of network effects, economies of scale, and two-sided market structures, arguing that conventional competition law struggles to regulate rapidly evolving digital markets. While

the study effectively critiques the Commission's approach, it leaves gaps in addressing whether alternative regulatory mechanisms, such as ex-ante digital competition rules, could provide a more tailored solution. Additionally, it does not fully explore the intersection of competition law with data protection concerns, nor the potential impact of platform interoperability requirements. Future research could examine how EU law might evolve to prevent anti-competitive practices while preserving innovation and consumer choice in digital ecosystems.

In the note by the UNCTAD Secretariat titled "*Enforcing Competition Law in Digital Markets and Ecosystems: Policy Challenges and Options*," the report examines the evolving competition landscape in digital markets. It highlights the growing economic power of large digital platforms and the challenges faced by competition authorities in addressing anticompetitive practices, such as abuse of market dominance, self-preferencing, and exploitative data collection. The document further discusses legal amendments, merger control mechanisms, and international cooperation strategies to enhance regulatory effectiveness, particularly in developing countries, to ensure fair competition in digital ecosystems.

In the paper "*Abuse of Dominance in Digital Platforms: An Analysis of Indian Competition Jurisprudence*," published in the *Competition Commission of India Journal on Competition Law and Policy*, Dr. Tilottama Raychaudhuri critically examines the evolving legal framework governing digital platforms in India. The study explores key concepts such as relevant market determination, dominance, and predatory pricing, analyzing landmark cases like *Meru v. Ola/Uber* and *MCX-NSE* to highlight the complexities of assessing dominance in multi-sided markets. The paper argues for a nuanced regulatory framework, integrating economic tools and legal amendments to address structural risks in digital competition while balancing consumer welfare and market innovation.

In the paper "*Digital Economy, Data, and Dominance: An Indian Perspective*," published in the *Competition Commission of India Journal on Competition Law and Policy*, Mr. Ankit Srivastava and Ms. Divyansha Kumar examine the role of data in digital markets and its implications for competition law enforcement in India. The study explores how network effects, economies of scale, and data aggregation create entry barriers and market dominance, leading to concerns about monopolistic structures, or "datapolies." The authors critically assess the Competition Commission of India's (CCI) approach to defining relevant markets, analyzing landmark cases such as *Jio's predatory pricing* and *Uber's deep discounting*, and highlight the limitations of traditional competition law tools in regulating digital ecosystems. The paper advocates for a refined regulatory framework incorporating data as a critical factor in market power assessments and competition enforcement.

In the paper "*A Critical Evaluation of India's Proposed Digital Competition Act*," published in the *Competition Commission of India Journal on Competition Law and Policy*, Anadi Tewari examines the necessity of a separate digital competition law in India. The study explores the challenges posed by digital marketplaces, including network effects, predatory pricing, and the dominance of large technology firms, while critically assessing the adequacy of the *Competition Act, 2002* in regulating such issues. By analyzing cases like *Google Search Bias* and *MakeMyTrip's anti-competitive practices*, the author argues that existing competition law, when effectively enforced, can address digital market concerns without requiring a separate *ex-ante* regulatory framework. The paper ultimately advocates for strengthening the enforcement mechanisms of the *Competition Commission of India (CCI)* rather than adopting a new legislative approach modelled on the European Union's *Digital Markets Act*.

II. UNDERSTANDING DIGITAL MARKETS: CHARACTERISTICS, CHALLENGES AND MARKET DYNAMICS

Digital markets have transformed traditional economic structures, reshaping competition and consumer interactions. Unlike conventional markets, digital markets rely on technology-driven models that facilitate online transactions, data-driven decision-making, and algorithmic pricing. These characteristics present unique challenges for competition law enforcement, particularly in preventing anti-competitive conduct such as self-preferencing, data monopolization, and algorithmic collusion. One of the defining features of digital markets is the presence of strong network effects, where the value of a service increases as more users join the platform. Digital giants such as Google, Amazon, and Facebook benefit from direct and indirect network effects, enabling them to consolidate market power quickly.¹⁶ In multi-sided markets, platforms attract both consumers and businesses, creating a reinforcing cycle that strengthens dominant firms.

Data is the cornerstone of digital market competition, with firms leveraging user data to refine services, enhance targeted advertising, and gain market insights. The control and exclusivity of data can create entry barriers, making it difficult for new competitors to challenge incumbents. This has led to calls for data-sharing mandates and interoperability requirements to prevent monopolistic behavior.¹⁷ Digital platforms use automated algorithms to adjust pricing dynamically based on demand, competition, and consumer behavior. While this enhances efficiency, it raises concerns over collusion, price discrimination, and anti-competitive strategies that can be difficult for regulators to detect and address.¹⁸ Many digital platforms,

¹⁶ Competition Commission of India (CCI), *Google Search Bias Case*, Case No. 7 & 30 of 2012.

¹⁷ Federation of Hotels and Restaurant Association of India v. MakeMyTrip, 2019 SCC OnLine CCI 37.

¹⁸ European Commission, *Digital Markets Act: New Rules for Gatekeeper Platforms* (2022).

including Google Search and Facebook, operate on a zero-pricing model, where services are provided free in exchange for user data, monetized through targeted advertising. This model makes traditional price-based competition analysis ineffective, requiring regulators to adopt new assessment tools focusing on consumer choice and data privacy.

The dominance of a few large firms raises significant competition concerns, particularly when platforms engage in self-preferencing, exclusionary practices, and exploitative data collection. Indian regulators face challenges in defining relevant markets, especially in multi-sided digital platforms where market boundaries are fluid. Digital markets create high entry barriers, often due to the control of critical infrastructure, proprietary technology, and economies of scale. New entrants struggle to compete against established players with vast financial resources and extensive consumer data. Digital platforms operate across multiple jurisdictions, making it difficult for national competition authorities to coordinate enforcement actions. The lack of international regulatory cooperation allows dominant firms to exploit regulatory arbitrage, avoiding stricter enforcement.¹⁹

Digital marketplaces such as Amazon, Flipkart, and Google Play Store operate as multi-sided platforms, connecting buyers and sellers while maintaining control over market access and transaction mechanisms. These platforms often impose restrictive conditions, such as anti-steering provisions (Reference can be taken from *XYZ Confidential Case*) and preferential treatment (*Umar Javeed Case*) for in-house services. Regulators worldwide are shifting from traditional ex-post competition enforcement to ex-ante regulatory frameworks that preemptively address digital competition concerns. India's proposed Digital Competition Act seeks to adopt a proactive stance, drawing lessons from the European Union's Digital Markets Act (DMA)²⁰ and the United States proposed antitrust reforms.²¹

Digital markets exhibit unique characteristics that challenge conventional competition law enforcement. While network effects, data monopolization, and algorithmic pricing drive efficiency and innovation, they also pose risks of market concentration and anti-competitive behavior. A dynamic regulatory approach, balancing innovation and fair competition, is crucial for ensuring a competitive and consumer-friendly digital economy in India

III. ENFORCING COMPETITION LAW IN DIGITAL MARKETS

A. Statutory Provisions and Limitations

¹⁹ U.S. House Judiciary Committee, *Investigation of Competition in Digital Markets* (2020).

²⁰ OECD, *Abuse of Dominance in Digital Markets* (2020).

²¹ Supra note 17.

The Competition Act, 2002, serves as a foundational legal framework aimed at preventing anti-competitive practices, fostering market efficiency, and protecting consumer interests. Its primary objective is to eliminate unfair trade practices, promote healthy competition, and ensure a level playing field for all market participants. The Act provides a regulatory structure to curb market distortions, sustain competitive forces, and safeguard the rights of consumers and businesses alike.

Among its key provisions, the Act regulates anti-competitive agreements and prohibits the abuse of dominant market positions under Section 4. Additionally, it establishes guidelines for mergers and acquisitions to prevent market concentration that could hinder competition. These measures are designed to promote consumer welfare and restrict monopolistic tendencies that may impede fair trade or restrict market access. Furthermore, the Act prevents dominant enterprises from leveraging their market power to engage in exploitative or exclusionary practices that could harm competition.²²

However, despite its robust framework, the Act faces notable challenges when applied to digital marketplaces. One of the significant limitations is its inability to comprehensively address the complexities of digital platforms, which operate on a global scale. Defining the relevant market and assessing dominance in digital ecosystems remains a challenge due to the dynamic nature of online platforms. Unlike traditional markets, digital platforms benefit from network effects, data-driven business models, and cross-border operations, making regulatory enforcement more complex. These challenges highlight the necessity of adapting competition law to the evolving digital economy and ensuring regulatory frameworks remain effective in addressing emerging competition concerns.²³

B. Key Competition Cases in The Digital Sector

In the case of *Matrimony.com Limited v. Google LLC*,²⁴ commonly referred to as the Google Search Case, the Competition Commission of India (CCI) observed that it exercised considerable restraint in not intervening in Google's search algorithm. The CCI reasoned that such interference could hinder future innovations and disrupt digital market experimentation.²⁵ This decision illustrates the Commission's attempt to strike a balance between competition concerns and consumer benefits derived from Google's search functionalities.

²² Taxmann, *Competition Law Manual*, (2023).

²³ Parsheera et al., *Competition Issues in India's Online Economy*, National Institute of Public Finance & Policy (2017).

²⁴ *Matrimony.com Limited v. Google LLC*, Case No. 07 & 30 of 2012

²⁵ *Id.* at para. 191-192, 205.

Contrastingly, in *Federation of Hotels and Restaurant Association of India and Others v. Make My Trip India Private Limited*,²⁶ the CCI prioritized creating a level playing field. It aimed to ensure that all market participants had an equitable opportunity to compete based on merit, thereby upholding fair market principles.

In another significant case, *Counfreedise v. Timex Group India Limited*,²⁷ the Commission investigated allegations of anti-competitive conduct in Resale Price Maintenance. The complainant alleged that Timex Group India had engaged in discriminatory practices against Counfreedise, a distributor of Timex wristwatches on e-commerce platforms, in favor of larger sellers like Clouddtail. However, the CCI found no prima facie case against Timex Group and ruled out anti-competitive conduct.

Further, in *Delhi Vyapar Mahasangh v. Flipkart Internet Private Limited*,²⁸ the CCI examined potential anti-competitive practices of major e-commerce platforms, including Flipkart and Amazon. The Commission noted that these platforms followed a marketplace e-commerce model and indicated that vertical agreements between such platforms and their associated sellers could be scrutinized under Section 3(4) of the Competition Act, 2002.²⁹

A more recent case, *Umar Javeed v. Google LLC*,³⁰ saw the CCI imposing a substantial penalty of Rs. 1337.76 crores on Google for abusing its dominant market position concerning the pre-installation of Google applications on mobile devices during their manufacture. Similarly, in *XYZ (Confidential) v. Alphabet Ltd.*,³¹ Google was fined Rs. 936 crores for its anti-competitive policies, particularly Abuse of dominance related to the Play Store.

From these cases, it is evident that the Competition Act, 2002, serves as a robust framework for regulating digital marketplaces. However, given the distinctive challenges and evolving nature of digital platforms, continuous assessment of its applicability remains essential.

IV. ANALYSING ABUSE OF DOMINANCE IN RELATION TO DIGITAL MARKETS

The concept of abuse of dominance is recognized across various jurisdictions, albeit under different terminologies, yet with a common underlying objective. In India, it is governed by the Competition Act, 2002,³² while similar provisions exist in the European Union,³³ South

²⁶ Federation of Hotels and Restaurant Association of India & Ors. v. Make My Trip India Pvt. Ltd., Case No. 14 of 2019, Competition Commission of India (CCI).

²⁷ Counfreedise v. Timex Group India Limited, Case No. 51 of 2018, Competition Commission of India (CCI).

²⁸ Delhi Vyapar Mahasangh v. Flipkart Internet Pvt. Ltd., Case No. 40 of 2019

²⁹ Id. at para. 26-27.

³⁰ Umar Javeed v. Google LLC, Case No. 39 of 2018.

³¹ XYZ (Confidential) v. Alphabet Ltd., Case No. 35 of 2020, Competition Commission of India (CCI) (2022).

³² Competition Act, No. 12 of 2003, § 4, India Code (2003).

³³ Treaty on the Functioning of the European Union, art. 102.

Africa,³⁴ the United States (as monopolization),³⁵ Japan (as private monopolization),³⁶ Mexico (as relative practices),³⁷ Australia (as misuse of market power),³⁸ and Brazil (as anticompetitive conduct).³⁹

While competition laws across jurisdictions, including the Indian Competition Act and the European Treaty on the Functioning of the European Union, share structural similarities, their enforcement can differ significantly. This divergence arises due to various factors, such as differences in the priorities of competition authorities, judicial interpretations, and historical as well as constitutional legal frameworks. As observed by Fox (2014), these distinctions can lead to variations in case selection and outcomes across different jurisdictions.⁴⁰ Ezrachi (2018) emphasizes that critiquing inconsistencies without considering jurisdictional differences is an oversimplification akin to comparing apples and oranges.⁴¹

The enforcement of abuse of dominance laws in India has been particularly significant in the digital market context. The Competition Commission of India (CCI) has examined various cases concerning digital platforms, reflecting the evolving nature of competition regulation in this domain. This section will analyze six key aspects namely, Anti-Steering Provisions, Platform Neutrality and self-Preferencing, Bundling and Tying, Data Exploitation and Market Power, Impact of Deep-Discounting on Market Competition and Exclusive agreements of the Indian legal framework on abuse of dominance that have influenced case outcomes, particularly in the digital economy.

A. Anti-Steering Provisions

These provisions restrict business users of a platform from steering their clients toward alternative offers outside the platform's ecosystem. For instance, a specific application may mandate that transactions be processed exclusively through its designated payment system, preventing users from opting for third-party payment services. Such restrictions contribute to anti-competitive behavior, as they limit consumer choice and reinforce platform dependency.⁴²

Recognizing this concern, the Parliamentary Standing Committee on Finance (2022) recommended that Systemically Important Digital Intermediaries (SIDIs) refrain from imposing

³⁴ Competition Act, No. 89 of 1998, § 8, South Africa.

³⁵ Sherman Antitrust Act, 15 U.S.C. §§ 1-7 (1890), United States.

³⁶ Act on Prohibition of Private Monopolization and Maintenance of Fair Trade, Japan.

³⁷ Federal Economic Competition Law, Mexico.

³⁸ Competition and Consumer Act 2010, Australia.

³⁹ Law No. 12.529, 2011, Brazil.

⁴⁰ Fox, E., *The Competition Law of the European Union*, Oxford University Press, 2014, p. 150.

⁴¹ Ezrachi, A., *Competition and Antitrust Law*, Oxford University Press, 2018, p. 25.

⁴² Seerat Bhutani et al., *The Competitive Constraints in Digital Markets: A Study on Platform Restrictions*, 2023.

conditions that restrict users' access to their platforms based on compliance with predetermined requirements.⁴³ This study asserts that such restrictive practices fall within the ambit of 'abuse of dominance', particularly under Sections 4(2)(a) and 4(2)(c) of the Competition Act, 2002, which prohibit unfair conditions and denial of market access.

This issue has been at the forefront of CCI's scrutiny of digital markets. In *XYZ (Confidential) Case*, the Competition Commission of India (CCI) examined platform restrictions that prevented merchants from offering alternative payment options.⁴⁴

B. Platform Neutrality or Self Preferencing

A single entity can function simultaneously as both a competitor and a platform provider within the same digital ecosystem. This dual role raises concerns regarding self-preferencing, wherein a platform prioritizes its own or affiliated services over those of competitors.⁴⁵ The Parliamentary Standing Committee on Finance (2022) has emphasized that SIDs should not engage in such preferential treatment when granting access to their platforms.⁴⁶

This study argues that the Committee's recommendation can be effectively enforced under the 'abuse of dominance' framework, particularly through Sections 4(2)(a), 4(2)(e) and Section 3(4) of the Competition Act, 2002, which prohibit imposition of unfair conditions and leveraging dominant market positions to favor one's own services.

The CCI's decision in *Umar Javeed v. Google LLC*⁴⁷ provides an illustrative precedent in this regard.⁵ In this case, Google was found to have engaged in self-preferencing by mandating pre-installation of its proprietary applications on Android devices, thereby disadvantaging rival services. The Commission held that such conduct amounts to an abuse of dominance, as it restricts fair competition and reinforces Google's ecosystem control.⁴⁸

C. Bundling And Tying

Several digital platforms compel consumers to purchase bundled or associated services, limiting their ability to choose alternative providers. The Parliamentary Standing Committee on Finance (2022) recognized that such practices create pricing imbalances and hinder competition, allowing dominant firms to extend their market power from one segment to another.⁴⁹

⁴³ Standing Committee on Finance, *Anti-Competitive Practices by Big Tech*, Lok Sabha Secretariat (2022).

⁴⁴ *XYZ (Confidential) v. Alphabet Inc.*, 2022 SCC OnLine CCI 63

⁴⁵ OECD, *Self-Preferencing by Digital Platforms: Market Impact and Policy Responses*, (2021).

⁴⁶ **Standing Committee on Finance**, *Anti-Competitive Practices by Big Tech*, Lok Sabha Secretariat (2022).

⁴⁷ 2022 SCC OnLine CCI 661.

⁴⁸ **Competition Commission of India Press Release**, *CCI Imposes ₹1337.76 Crore Penalty on Google for Anti-Competitive Conduct in Android Ecosystem*, Oct. 20, 2022.

⁴⁹ **Standing Committee on Finance**, *Anti-Competitive Practices by Big Tech*, Lok Sabha Secretariat (2022).

This study asserts that the Committee's recommendation can be effectively enforced under the 'abuse of dominance' framework, particularly through Sections 4(2)(a) and 4(2)(d) of the Competition Act, 2002, which prohibit the imposition of unfair conditions and supplementary obligations on consumers. Additionally, Section 3(4)(a) of the Act, which regulates tie-in arrangements, is applicable when dominant firms require consumers or manufacturers to accept bundled services as a condition for access to the platform.

The CCI's decision in *Umar Javeed v. Google LLC* highlights this issue, as Google was found to have tied its proprietary services (such as Google Search, Chrome, and Play Store) to its Android operating system, restricting consumer choice. Similarly, in *Kshitij Arya v. Google LLC (2021)*⁵⁰, the CCI initiated an inquiry into Google's agreements with device manufacturers, which allegedly obligated them to pre-install the entire suite of Google applications and prevented them from selectively installing individual apps.

D. Data Exploitation and Market Power

The Parliamentary Standing Committee on Finance (2022) observed that market leaders with access to vast amounts of consumer data tend to grow exponentially, while new entrants struggle due to limited access to user information. The Committee highlighted concerns that Significant Digital Intermediaries (SIDIs) might exploit their control over consumer data to reinforce their market dominance, making it difficult for smaller competitors to gain a foothold. To address this, it recommended that SIDIs should not process the personal data of end users who engage with third-party services if those services rely on the SIDI's core platform.⁵¹

This recommendation can be effectively enforced under India's competition law, particularly through the 'abuse of dominance' provisions under Section 4(2)(a), Section 4(2)(c), and Section 4(2)(e) of the Competition Act, 2002. These provisions prohibit unfair conditions, denial of market access, and leveraging dominance in one sector to gain an advantage in another.

A notable case highlighting this issue is *In Re: Updated Terms of Services and Privacy Policy for WhatsApp Users (2021)*.⁵² In this case, the Competition Commission of India (CCI) initiated an investigation into Meta (formerly Facebook) and WhatsApp, alleging that their updated privacy policy forced users into accepting unfair data-sharing practices, thereby reinforcing Meta's dominance across multiple markets. The case underscored concerns that dominant platforms could exploit consumer data to consolidate power, ultimately restricting

⁵⁰ SCC OnLine CCI 33.

⁵¹ Supra note 47.

⁵² 2021 SCC OnLine CCI 19.

competition.⁵³

E. Impact Of Deep Discounting on Market Competition

Deep discounting, a prevalent strategy among digitally operated businesses, involves offering substantial price reductions to attract new customers and expand market presence. While this approach can lead to immediate sales boosts, it carries significant implications for market competition and brand perception.

Aggressive discounting can distort market dynamics by creating an uneven playing field. Well-funded companies may leverage deep discounts to rapidly increase their user base, potentially driving smaller competitors out of the market. This practice can lead to market consolidation, reducing consumer choices and stifling innovation. In India, such conduct is scrutinized under the Competition Act, 2002, particularly Section 4(2)(a), which addresses the abuse of dominant position through unfair pricing strategies. The Competition Commission of India (CCI) has investigated cases where e-commerce giants allegedly employed deep discounting to favor select sellers, thereby undermining competition.

F. Exclusive Agreements And Their Anti-Competitive Effects

One of the concerns highlighted by the Parliamentary Standing Committee on Finance (2022) is the practice of platforms entering into exclusive agreements with specific brands, granting them the sole right to sell their products through that platform. These exclusive tie-ups can limit consumer choice and restrict market access for competing brands, potentially leading to an abuse of dominance. Such arrangements raise concerns about anti-competitive behavior, as they may force consumers to rely solely on one platform for particular products, limiting their ability to explore alternatives.

This issue falls within the purview of India's competition law framework, particularly under **Section 4(2)(a)** of the Competition Act, 2002, which prohibits unfair conditions imposed by a dominant entity. Additionally, **Section 4(2)(c)** addresses practices that deny market access to competitors, and Section 3(4) scrutinizes anti-competitive agreements, including exclusive supply arrangements that restrict competition.

A significant case in this regard is *Federation of Hotels and Restaurant Association of India v. MakeMyTrip & GoIbibo (2019)*.⁵⁴ In this case, the Competition Commission of India (CCI) found that MakeMyTrip and GoIbibo (collectively MMT-Go) violated the Competition Act by

⁵³ Competition Commission of India Press Release, *CCI Orders Probe against WhatsApp's 2021 Privacy Policy*, March 24, 2021.

⁵⁴ 2019 SCC OnLine CCI 37.

imposing extensive price parity clauses and exclusivity conditions on hotel partners. The CCI observed that such terms restricted hotels from offering better prices on competing platforms, thereby distorting fair competition.⁵⁵ The ruling emphasized that exclusive agreements between platforms and suppliers must be carefully scrutinized to prevent anti-competitive outcomes.

V. CHALLENGES IN ENFORCING COMPETITION LAW IN DIGITAL MARKETS

One of the most significant challenges in applying competition law to digital marketplaces is the determination of the relevant market. Traditional methods of market definition, which rely on physical boundaries, are often inadequate in the digital space. Given that online platforms operate across geographical borders, establishing the competitive landscape becomes complex. Recognizing these challenges, the Competition Commission of India (CCI) has adopted a more dynamic approach to market definition, tailoring its analysis to the unique characteristics of digital commerce.

In *Ashish Ahuja v. Snapdeal & Others* (2014, para. 16), the CCI considered the e-commerce industry and observed that online and offline markets differ in terms of pricing strategies and customer experiences.⁵⁶ The Commission noted that consumers evaluate choices across both platforms before making purchasing decisions, indicating a level of substitutability between the two channels.

Similarly, in *Mohit Manglani v. Flipkart India Pvt. Ltd.* (2015), the CCI acknowledged the distinct nature of e-commerce platforms, emphasizing their ability to allow consumers to compare product prices and features in real-time.⁵⁷ However, the Commission did not classify e-commerce as a separate relevant market, since the entities under scrutiny did not hold dominant positions in either the online or offline segments.

In *Albion Infotel Ltd. v. Google Inc.* (2014, para. 16), the CCI examined allegations of abuse of dominance in online search and search advertising and, for the first time, defined the market for online search advertising in India as a relevant market.⁵⁸ The Commission also found that Google held a dominant position in this segment.

Contrasting this, in *Ashish Ahuja*, the CCI had earlier stated that e-commerce and traditional retail operate as distribution channels for the same product rather than distinct relevant

⁵⁵ Competition Commission of India, *Order against MakeMyTrip & GoIbibo on Price Parity and Exclusivity*, 2019.

⁵⁶ *Ashish Ahuja v. Snapdeal & Others*, Case No. 17 of 2014, Competition Commission of India, at para. 16.

⁵⁷ *Mohit Manglani v. Flipkart India Pvt. Ltd.*, Case No. 80 of 2014.

⁵⁸ *Albion Infotel Ltd. v. Google Inc.*, Case No. 07 of 2014, Competition Commission of India, at para. 16.

markets.⁵⁹ However, in *All India Online Vendors Association v. Flipkart India Pvt. Ltd. (2018, para. 24)*, the Commission refined its stance, distinguishing between online marketplaces and online retail stores, noting that the former function as independent platforms rather than extensions of conventional retail.⁶⁰

In *Meru Travel Solutions Pvt. Ltd. v. Uber India Systems Pvt. Ltd. (2015, para. 18)*, the CCI reviewed a complaint by a Kolkata-based taxi company against Uber, alleging anti-competitive practices.⁶¹ Here, the Commission considered the presence of traditional yellow taxis and concluded that Uber's cabs and traditional taxis formed part of the same relevant market. This analysis underscored the importance of assessing market dynamics based on service substitutability and consumer behavior rather than rigid classifications.

These cases illustrate how the CCI has progressively refined its approach to defining relevant markets in the digital economy, adapting to the evolving nature of competition in online platforms.

VI. PROACTIVE REGULATORY APPROACHES TO DIGITAL MARKETS

While the Competition Act, 2002 provides a regulatory framework for addressing anti-competitive conduct, the rapid expansion of digital markets has led to discussions on the necessity of ex-ante regulation to proactively assess competition in the digital economy. Recognizing this, the Parliamentary Standing Committee on Finance (2022) published a comprehensive report highlighting anti-competitive practices by Big Tech and strongly recommended a new legislative framework to ensure fairness and transparency in digital markets.

To create a fair, transparent, and contestable digital ecosystem, the Committee proposed the introduction of a Digital Competition Act (DCA), advocating for an ex-ante regime that would impose obligations on significant digital entities before competitive issues arise. Following this recommendation, the Ministry of Corporate Affairs constituted a specialized panel to deliberate on the enactment of Digital Competition Law.⁶²

The rationale behind ex-ante regulation is to address potential competition concerns in digital markets before they materialize, rather than responding retrospectively to anti-competitive

⁵⁹ Supra note 54.

⁶⁰ *All India Online Vendors Association v. Flipkart India Pvt. Ltd.*, Case No. 20 of 2018, Competition Commission of India, at para. 24.

⁶¹ *Meru Travel Solutions Pvt. Ltd. v. Uber India Systems Pvt. Ltd.*, Case No. 96 of 2015, Competition Commission of India, at para. 18.

⁶² KR Srivats, Govt Sets Up Panel to Frame New Digital Competition Law, *The Hindu Business Line* (2023).

conduct. The necessity of such legislation must be assessed based on certain key parameters, which have been outlined in Point 6 of this paper.

VII. EVALUATING THE ROLE OF EX-ANTE REGULATIONS IN DIGITAL MARKETS

A. Balancing Innovation and Regulatory Oversight

Ex-ante regulation, which involves implementing rules before any specific issue arises, has been proposed as a means to mitigate potential risks and concerns in digital marketplaces. While its primary objective is to safeguard competition, ensure consumer protection, and promote market fairness, it is essential to assess the possible drawbacks of such a regulatory framework.

One of the key concerns surrounding ex-ante regulation in digital markets is its potential to stifle innovation and entrepreneurship⁶³. A relevant example can be found in the case of *Matrimony.com Limited v. Google LLC (2018)*, where the Competition Commission of India (CCI) exercised caution in intervening in Google's search design. The CCI explicitly noted that excessive regulatory interference could discourage future innovations and hinder experimentation in digital markets, despite allegations of anti-competitive conduct.

B. Avoiding Overregulation and Rigidity

Digital marketplaces operate in a rapidly evolving environment where technological advancements and market dynamics change frequently. Ex-ante regulations risk becoming rigid and outdated, making it difficult to adapt to new technological developments and shifts in market behavior. By nature, an ex-ante regulatory framework relies on rule-based constraints rather than effect-based considerations, potentially limiting its flexibility in addressing emerging challenges.⁶⁴

In the case of *Vinod Kumar Gupta v. WhatsApp Inc. (2017)*, the petitioner challenged WhatsApp's 2016 privacy policy, alleging that it constituted an abuse of its dominant position. However, the Competition Commission of India (CCI) dismissed these allegations, holding that WhatsApp collected only limited information and that users had the option to opt out of sharing their account details with Facebook within 30 days of accepting the updated terms and privacy policy.⁶⁵

Similarly, in *Baglekar Akash Kumar v. Google LLC and Another (2021)*, the informant accused

⁶³ Indrajeet Sircar, *Impact of Ex-Ante Regulation on Innovation in Digital Markets*, Economic & Political Weekly (2022).

⁶⁴ OECD, *Ex-Ante Regulation in Digital Markets: Benefits and Challenges*, OECD Competition Committee Report (2021).

⁶⁵ *Vinod Kumar Gupta v. WhatsApp Inc.*, Case No. 99 of 2016, Competition Commission of India (2017), para 15.

Google of leveraging its dominance in internet services to integrate Google Meet with the Gmail application, potentially violating Section 4 of the Competition Act, 2002. The CCI, however, rejected these claims, reasoning that Google users could independently access both applications and use their respective features without being forced to use one with the other.⁶⁶

VIII. SUGGESTIONS AND FUTURE APPROACH

To effectively regulate abuse of dominance in digital markets, India must adopt a hybrid approach that balances ex-ante and ex-post regulations. While ex-ante measures, such as the proposed Digital Competition Act, can help prevent anti-competitive practices, they should be flexible enough to accommodate technological advancements. Additionally, strengthening the Competition Commission of India's (CCI) investigative and enforcement capabilities, enhancing data-sharing transparency, and ensuring interoperability among digital platforms can foster fair competition. Future research should explore the role of AI in competition law enforcement, the impact of self-preferencing by dominant players, and global best practices for regulating Big Tech within the Indian context.

A. Specialised Unit For Defective Oversight

Given the increasing complexity of cases in the digital sector and the growing need for data and technology expertise, the Competition Commission of India (CCI) announced in October 2022 the establishment of a Digital Markets Data Unit (DMDU) to enhance regulatory oversight.⁶⁷ Drawing from the United Kingdom's Digital Market Unit (DMU), which serves as a specialized body with expertise in digital business models, data utilization, and platform incentives, India should ensure that the DMDU is equipped with specialized officers who possess a deep understanding of digital markets.⁶⁸ Furthermore, a well-defined regulatory framework should be developed to govern the DMDU's operations, ensuring its effectiveness in addressing digital competition concerns. Future research should focus on structuring the DMDU, defining its jurisdiction, and examining its potential role in proactive digital market regulation.

B. Integration Of Investigative Power

India can take inspiration from international regulatory frameworks to enhance its approach to digital market competition. In the European Union, a joint team within the Directorate-General for Competition and the Directorate-General for Communications Network, Content and

⁶⁶ *Baglekar Akash Kumar v. Google LLC and Another*, Case No. 19 of 2021, Competition Commission of India (2021), para 14.

⁶⁷ ET Government, *CCI to Set Up Digital Markets Data Unit for Enhanced Oversight*, Oct. 2022.

⁶⁸ Aniko Adam et al., *The Role of Digital Market Units in Competition Regulation*, 2022.

Technology is responsible for enforcing digital competition laws through investigative powers, monitoring mechanisms, and penalties for non-compliance.⁶⁹ Similarly, Japan's regulatory model focuses on ensuring transparency and predictability in digital transactions to maintain fair competition. The European Union imposes direct regulations on dominant platforms, or gatekeepers, based on a digital ecosystem approach.

To strengthen India's digital competition framework, the Competition Commission of India (CCI) could establish a specialized enforcement team that integrates data analytics and market monitoring mechanisms. A hybrid regulatory approach, combining transparency in digital transactions with specific obligations for dominant platforms, could create a fair and contestable digital market. Future research should focus on defining gatekeeper obligations, assessing the impact of ex-ante and ex-post regulations, and developing India-specific enforcement strategies.

C. Necessary Amendments to Existing Legislation

In complex digital markets where the defendant possesses superior knowledge and greater access to relevant data, the requirement for the plaintiff or informant to bear the burden of proof may be eased or even transferred to the defendant. The European Commission report suggests that in cases where conduct is likely to be anti-competitive, a cautious approach should be adopted by prohibiting such practices unless the defendant can substantiate their competitive nature.⁷⁰

IX. CONCLUSION

In recent years, various antitrust authorities and independent experts have put forward recommendations to enhance the regulation of digital markets. This paper has examined some of these suggestions. In India, the Competition Commission of India (CCI) conducted an extensive Market Study on E-Commerce, providing crucial insights into the evolving digital landscape (CCI, 2020). Additionally, the Indian Government introduced the Consumer Protection (E-Commerce) Rules, 2020, which govern e-retailers operating in India or catering to Indian consumers. However, Section 3(b) of these Rules narrowly defines an "e-commerce entity" as any individual or entity that owns, operates, or manages a digital or electronic platform for e-commerce, explicitly excluding individual sellers using marketplace platforms

⁶⁹ Directorate-General for Competition & Directorate-General for Communications Network, Content and Technology, *European Digital Market Regulation & Oversight*, 2022.

⁷⁰ Crémer, J., Montjoye, Y. A. D., & Schweitzer, H. (2019). *Competition policy for the digital era*. European Commission, p. 51.

to offer their goods or services.

Despite existing legal provisions, no regulation comprehensively tackles competition challenges in digital markets. With the rapid expansion of the digital economy, there is an urgent need to establish well-defined regulatory guidelines tailored to this sector. While this paper does not provide an exhaustive list of recommendations, an analysis of reports and regulatory approaches from other jurisdictions, as discussed earlier, can serve as a valuable starting point for crafting a structured and effective competition framework for India.
