REVAMPING THE CODE: INNOVATING APPROACH TO DIGITAL MARKET OVERSIGHT

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Abstract

In recent years, the rapid expansion of digital platforms in India has significantly impacted competition law, prompting authorities to adapt to the dynamic and evolving market circumstances. This shift led to introduction of the Digital Competition Bill in 2024, which aims to target the anti-competitive behaviour of large digital enterprises by imposing specific obligations on them. The paper explores the unique characteristics of digital platforms that distinguish them from the traditional market. It further analyses the rationale behind the Digital Competition Bill, emphasising its necessity by examining recent trends, particularly the growing dominance of digital platforms in India. Additionally, the paper identifies and discusses several gaps in the Bill, such as the exclusion of artificial intelligence in the list of core digital services and the failure to implement a specific end-user threshold for the designation of an enterprise as a Systematically Significant Digital Enterprise (SSDE). The paper critically evaluates the proposed ex-ante regulation, drawing comparisons with the legislative framework of other jurisdictions.

Keywords: *Digital market, ex-ante regulation, dominance, core digital service, end-user threshold*

I. Introduction

THE COMPETITION Act was originally enacted in 2002 with the aim of promoting consumer welfare by encouraging an entity to compete in a competitive manner so that consumers would reap the maximum benefit from such competition and have multiple ranges of goods and services to choose from, at fair prices. The essence of the act is based on the

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theory of harm[1]which states the idea of how the anti-competitive behaviour of the entities can distort the competition in the market for their benefit, with consumers eventually bearing the cost in a variety of ways. However, the advancement of science and technology led to the emergence of a new market that is global in scope and has no boundaries, often known as the digital market or online platform market. This new market environment has created new anti-competitive dilemmas before the competition authority due to characteristics of the digital market such as economic scale, personalised data, conglomerate business models, direct and indirect market effects, and so on. All these factors contribute to the anti-competitive behaviour of these entities that could not be effectively addressed by the traditional jurisprudence of competition law; hence, a pressing need has arisen for new legislation that is equipped with modern instruments of the competition law. To meet this need, the Digital Competition Bill, 2024 was enacted to foster the law of the web to counteract the anti-competitive behaviour of large digital enterprises by assigning them obligations as laid down in the law. The essence of this law has been based on the neo-classical theory[2]which advocates for a competitive market where new firms can enter the market without facing undue hindrances from the dominant entities, allowing them to fairly compete and capture the market share. The underlying principle of law is to maximise consumer welfare while having no adverse effect on the market.

This article will explore the key traits of the digital market and the rationale for enacting ex-ante regulation, particularly in light of cases where the Competition Commission of India (CCI) has flagged anti-competitive behaviour by large digital enterprises. It will also discuss the drawbacks of the Bill in comparison to international standards, such as its failure to recognise artificial intelligence as a core digital service, the lacunas in a uniform end-user threshold for the designation process of enterprises as Systematically Significant Digital Enterprises (SSDE), and the multi-jurisdictional challenges that may arise due to variations in the global legislation. Furthermore, the article will examine the potential consequences and propose suggestions based on the legislation framework of the United States, the European Union, the United Kingdom and Singapore.

II. Traditional to Digital: Key Traits and Their Challenges

[1] Hans Zenger and Mike Walker, "Theories of Harm in European Competition Law: A Progress Report"*SSRN*(2012)*available at*https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2009296 (last visited on July 7, 2025, 1:30 PM).

[2] Louis Lefeber, "Classical vs. Neoclassical economic thought in Historical Perspective: The Interpretation of processes of economic growth and development"21 *JSTOR*3(2000), *available at*https://www.jstor.org/stable/26219719?seq=1 (last visited on July 7, 2025,1:30 PM).

In economics, a market is traditionally defined as a place where the buyer and seller come together to exchange goods and services for a price, known as consideration, within a particular geographical location. The traditional theory of markets emphasises 'territorial jurisdiction' and 'exchange for consideration' aspects of the definition.[3] However, with the advent of the internet, the conventional market dynamics have shifted. The internet now penetrates every aspect of our lives, such as shopping, communications, social interactions, payment systems, food delivery, and travel. This has given origin to an online market, which leverages information and communication systems to facilitate the interaction between buyers and sellers. The growth of these online markets has gained traction during the pandemic, drawing more time and attention from people to online platforms. A salient characteristic of these platforms is that they transcend the fixed territorial jurisdiction, allowing for seamless cross-border trade and making it effortless to capture customers throughout the globe. However, this is not the only factor distinguishing online platforms (markets) from conventional markets; several other unique features contribute to this distinction, such as:

Zero Price Model

Many digital platforms provide services to the consumer at no cost. For instance, Google and Facebook, users can avail of their services for free. However, what appears free comes at a hidden cost. Consumers pay the price through the sharing of their data or by bearing increased prices for goods and services. In the former case, the platform collects and analyses the user data for targeted advertising, fetching substantial revenue for the platforms.[4] In the latter, business users pay commissions to the platforms, which are eventually passed on to consumers in the form of a higher price of goods and services.[5]For instance, platforms like Ola and Uber charge the business user (taxi drivers) a commission, which results in taxi riders paying an enhanced fare. This 'free' service model employed by digital platforms contributes to their dominance in the market, especially benefiting first-movers in the industry by creating significant entry barriers for new entrants in the market. For example, In

[3]Hahn, Hans Peter, and Geraldine Schmitz, "Market as Place and Space of Economic Exchange: Perspectives from Archaeology and Anthropology"*JSTOR*(2018), *available at*https://doi.org/10.2307/j.ctvh1dm8p(last visited on July 7, 2025, 1:30 PM).

[4]In *Re: Delhi Vyapar Mahasangh v. Flipkart.Internet Private Limited and Ors.,* Combination Registration No. 40 of 2019dated January 13, 2020,10.4. (Case on alleged anti-competitive practices by Flipkart and Amazon favouring select sellers under the Competition Act, 2002.)

[5]*Re Samir Agrawal v. ANI Technologies Pvt. Ltd. &Others*, 37/2018, 6.

India, Google has established dominance in the search engine market,[6]Facebook and Instagram have captured dominance in the social media market[7]and Amazon and Flipkart dominate e-commerce[8]. This dominance is further reinforced as consumers become accustomed to the interface and features of the platform, making it difficult for users to transit to other platforms.

Network Effects

In simple terms, platforms act as intermediaries, connecting the buyers and sellers in one place, and the value of services is enhanced as the number of users on both sides of the platform grows. This effect can be divided into two parts:[9]direct and indirect network effects. In the case of direct network effects, the value of the service increases when the number of users on the same side of the platform grows; for instance, a social media platform becomes more valuable to users as more end users join, i.e., friends and family members. In indirect network effects, the value of the service increases due to a rise in the number of users on the opposite side of the platform; for example, e-commerce will be more attractive to consumers as the number of business users increases, and vice versa. These effects enhance the platform's attractiveness to new potential users, causing it to expand further. However, they also pose two significant challenges to the competition authorities, i.e., *firstly*, network effects can make the platforms prone to monopolies or oligopolies, as one or a few large platforms would be there to provide services to a substantial user base. *Secondly*, strong network effects create barriers for new enterprises, as they face the challenge of building a new user base already captured by the large digital platforms. The network effect is further heightened in India due to the large number of internet users[10]and varying levels of digital

[6]Tanushree, B., "Leading search engines in India 2018-2025, by market share"*Statista*, (June 26, 2025),*available at*https://www.statista.com/statistics/1405689/search-engines-market-share-india-all-devices/(last visited on July 8, 2025, 4:30 PM).

[7]Statcounter Global Stats. (n.d.),"Social Media Stats India", *Statcounter Global Stats*(June 2025),*available at*https://gs.statcounter.com/social-media-stats/all/india (last visited on July 8, 2025, 4:30 PM).

[8]Minhas, A., "Market share of retail e-commerce in India 2022, by marketplaces", *Statista* (June 23, 2025),*available at* https://www.statista.com/statistics/1426790/india-ecommerce-market-share-by-marketplaces/(last visited on July 8, 2025, 4:30 PM).

[9]Stobeierski, T., "What Are Network Effects?", *HBS Online Business Insights Blog* (November 12, 2024)*available at*https://online.hbs.edu/blog/post/what-are-network-effects(last visited on July 8, 2025, 4:30 PM).

[10]Tanushree, B., "Number of Internet users in India 2010- 2050", *Statista*, (April 14, 2025) *available at*https://www.statista.com/statistics/255146/number-of-internet-users-in-india/ (last visited on July 8, 2025, 4:30 PM).

literacy[11]among the users, leading many users to join platforms without applying conscious cognition, creating a domino effect, i.e., new users join the platform following one after another. These challenges compel new entrants to either work in the small share of the market, provided they have initial monetary resources, or they will gradually wipe out of the market.

Data Dominance

As the digital platform expands, it caters to a larger number of consumers, resulting in the handling and collection of vast amounts of data generated through consumer activities. This collection of data is used to drive data innovation, which can be utilised in several ways; *firstly,* the platform can enhance the quality of the product by analysing the habits, needs, and preferences of the consumer using data footprints. *Secondly,* data can be used for the target advertisement, allowing the platform to deliver more personalised advertisements tailored to the individual needs of the consumer. *Thirdly*, data fosters innovation by identifying gaps in the supply chain, allowing platforms to address these gaps without carrying out extensive research and development. However, this practice is not free of criticism, as the use of consumer data in exchange for services raised significant privacy concerns, especially when it includes sensitive personal data fetched through first-hand users. For example, the Cambridge Analytica case highlighted the privacy concerns for misuse of user data, where Facebook sold the user data to build voter profiles to influence voting patterns and behaviour in the US elections.[12] Additionally, an investigation by the Department for Culture, Media & Sport (DCMS) committee of the UK revealed that Facebook shared consumer data with app developers in exchange for the high price of targeted advertisements.[13] Furthermore, the privacy policy update by WhatsApp in India sparked concerns, as it allows the platform to share its user data with its parent company, i.e., Facebook (now Meta) and its subsidiaries, without providing an option to Indian users to opt out of the policy.[14]

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[11]Oxfam Report,*India Inequality Report 2022: Digital Divide* (December 5, 2022)*available at*https://www.oxfamindia.org/knowledgehub/workingpaper/india-inequality-report-2022-digital-divide(last visited on July 8, 2025, 4:30 PM).

[12] Boldyreva, Grishina, Duisembina,"Cambridge Analytica: Ethics and OnlineManipulation with Decision-Making Process" 5 *EPSBS*, *available at*https://www.europeanproceedings.com/files/data/art.icle/95/4063/art.icle_95_4063_pdf_100.pdf(last visited on July 7, 2025, 5:00 PM).

[13]House of Commons, Digital, Culture, Media and Sport Committee, *Disinformation and fake news: Final Report*(2019), *available at* Disinformation and 'fake news' (parliament.uk) (last visited on July 7, 2025, 5:00 PM).

[14]In *Re: Updated Terms of Service and Privacy Policy for WhatsApp Users*, Suo Moto Case No. 01 of 2021 (Case concerning the challenge to WhatsApp's updated Terms of Service and Privacy Policy over alleged violations of users' privacy and data protection rights.)

Consumer Inertia, Multi-Homing and Switching

Once consumers become accustomed to the services of a particular platform, they tend to exhibit loyalty and preference towards the platform known as Inertia.[15] This behaviour is further reinforced when the same platform offers a wide range of similar services to the users, as users are more inclined to stay under the ecosystem of one platform rather than switching to other platforms, known as single-homing.[16] For example, Google provides a suite of services like Calendar, Chrome, Classroom, Drive, Gmail, Search Engine, Meet, etc.; similarly, Microsoft offers Excel, LinkedIn, OneDrive, Outlook, PowerPoint, Word, etc. However, switching can be hampered by other technical factors, such as *Firstly,* when consumers move to a different platform, they often cannot transfer their personal data to a new platform; this loss of data discourages switching and hampers consumer mobility between platforms. *Secondly*, platforms usually tie together one service with another and further seamless interoperability of data between services makes the platform a preferable option for the user and restricts the switching to other platforms.[17]For example, Google Gmail offers the ability to attach links from Google Drive, Google Photos, and Google Docs, enabling seamless interoperability of data across its applications. This strategy prevents consumers from exerting their cognitive abilities and reasonable choices by fostering psychological and technical dependence on a single platform, complicating market entry and creating barriers for the new entrant.

III. A Global Outlook on Digital Market Regulation

European Union (EU)

The European Union has enacted the Digital Markets Acts,2022 (DMA) as a part of the broader Digital Service Act Package to address the anti-competitive behaviour of large digital enterprises. This legislation is an inspiration for India, forming the foundation of India's *de novo* Digital Competition Bill, which draws upon the principles of the EU's framework. Both the EU and India's laws provide both qualitative and quantitative thresholds for determining

[15] Australian Competition & Consumer Commission, *Digital platform services inquiry*(Interim report No. 2, 2021), *available at*https://www.accc.gov.au/system/files/Digital%20platform%20services%20inquiry%20-%20March%202021%20interim%20report.pdf (last visited on July 7, 2025, 5:00 PM).

[16]*Google Search (Shopping)* Case At.39740 (Case on Google's abuse of dominant position in online search and shopping services, violating EU competition law.)

[17]*XYZ (Confidential) v. Alphabet Inc. and Other*, Combination Registration No. 07 of 2020 dated October 25, 2022 (Case involving allegations of privacy violations and misuse of confidential user data by Alphabet Inc. and others.)

the applicability of these regulations. In the EU, the DMA specifically targets large undertakings, referred to as 'Gatekeepers', and outlines a detailed list of the activities categorised under 'core platform service'.[18] However, a key distinction between the two frameworks is in the authority to expand the scope of regulated services. Another notable distinction lies in the penalty provisions, where the gatekeeper can be fined up to twenty per cent of its total global turnover for repeated infringement in the same core platform service, particularly if the infringement occurs within eight years of the non-compliance decision[19] in DMA. Conversely, India's draft bill does not currently address penalties for repeated infringement. The Indian regulatory bodies can consider incorporating similar provisions that would deter the effect of such penalisation and strengthen enforcement and ensure compliance among gatekeepers. The European Commission (EC) has taken a leading role in enforcing the DMA, which is exemplified by the Commission's recent initiation of two specification proceedings against Apple to ensure its obligation to comply with the interoperability operations under the DMA.[20]The first proceeding primarily focuses on iOS connectivity features and functionalities used by connected devices like smartphones, headphones, etc., while the second addresses Apple's process for handling interoperability requests from the developers. These proceedings are expected to conclude within six months of initiation of the proceedings. This case could set a significant precedent, offering a benchmark for other countries like India for assessing compliance obligations.

United States of America (USA)

The United States of America (USA) has enacted twelve bills aimed at regulating large digital platforms, with two prominent examples being The Ending Platform Monopolies Act, 2021 and The Open App Market Act, 2021.A key distinction between India's approach to regulating Systemically Significant Digital Enterprises(SSDEs) and the USA's regulation of Covered Platforms is the duration of the regulatory oversight. In the former, regulations on the SSDEs will apply only for three years,[21] allowing for periodic reviews and the potential for regulatory withdrawal if the entity no longer meets the necessary thresholds. In contrast, in the USA, the obligations apply for ten years regardless of the change in ownership or

[18] Digital Market Act, 2022, art. 3(3).
[19] Digital Market Act, 2022, art.30(2).
[20]European Commission, Press Note, *Commission starts first proceedings to specify Apple's interoperability obligations under the Digital Markets Act* (2024)*available at*https://ec.europa.eu/commission/presscorner/detail/en/ip_24_4761 (last visited on July 7, 2025, 5:00 PM).
[21] Digital Competition Bill, 2024, s. 4 (8).

controlling interest.[22]India's three-year review period offers greater flexibility in adapting to the rapidly shifting digital market, ensuring that the regulations remain relevant and proportionate to the company's evolving market position as the digital markets are highly dynamic and can shift dramatically. It allows the regulators to react to such situations and withdraw such regulatory oversight in case the entity no longer falls under the threshold.

The Open Market Act, (OMA) 2021[23] in the USA applies to the Covered Companies that own or control an app store with more than fifty million monthly active users. Conversely in India, the threshold limit is set much lower, with the core digital service being subject to regulation in case they have either one crore (ten million) end users or at least ten thousand business users.[24]Thus, India's regulatory authority can take inspiration from the USA approach and consider raising the threshold limit to better align with the market's size.

Furthermore, The Ending Platform Monopolies Act, 2021 in the USA imposes severe penalties on individuals involved in unlawful conduct related to The Covered Platforms, with fines amounting to fifteen per cent of the total average daily US revenue of that person in the preceding calendar year or the thirty per cent of the total average daily US revenue of the person during the period when the unlawful conduct took place, whichever is higher.[25] In contrast, in India, individuals' financial penalty is limited to a maximum of ten per cent of the average income for the preceding three financial years.[26] The stringent approach of the USA places greater accountability on key decision-makers, serving as a strong deterrent to misconduct. India can consider increasing the severity of the financial penalties on individuals to enhance personal accountability and discourage unlawful activity within large digital platforms.

United Kingdom (UK)

The United Kingdom has enacted the Digital Markets, Competition, and Consumer (DMCC) Act, 2024 to address the challenges posed by the digital market. The United Kingdom adopts a flexible regulatory framework that does not define any specific sectors as falling under the purview of "digital activities".[27] Instead, the regulation provides a broad definition, allowing room for greater flexibility and adaptability in response to shifting market dynamics. This

[22] The American Innovation and Choice Online Act, HR 3816, 117th Congress (2021), s. 2(d)(3) https://www.congress.gov/bill/117th-congress/house-bill/3816 (last visited onJuly 9, 2025, 5:00 PM).
[23] The Open App Market Act, 2021,s. 2(3).
[24] Digital Competition Bill, 2024, s. 3(2).
[25] The Ending Platform Monopolies Act, 2021, s. 3(c)(1) & (2).
[26] Digital Competition Bill, 2024, s.28.
[27] Digital Markets, Competition and Consumers Act, 2024, s. 2(3).

flexible approach contrasts with India's structured regulatory framework, which provides an illustrative predetermined list of activities falling under the core 'digital services' to be regulated.[28]The UK opts for a qualitative approach[29] in terms of designation of an undertaking as 'Strategic Market Status'(SMS), thereby empowering the Competition and Markets Authority (CMA) to undertake a case-by-case analysis, enabling a nuanced analysis and sector-specific evaluation of an entity's market status, allowing greater flexibility and ensuring that regulations can be tailored to the distinct features and requirements of different sectors. In contrast, India establishes fixed pre-defined quantitative and qualitative thresholds for the identification of entities having Significant Social Digital Service (SSDS) status empowered under Section 3(2) of the Digital Competition Bill, 2024.[30]Though the predefined threshold ensures clear guidelines, it might limit the ability of the competition authority to take into account the sectoral difference. Another key difference lies in the duration of an undertaking as SMS or SSDS. In the UK, the entity designated as SMS will be subjected to regulation for five years under DMCC Act.[31] Meanwhile, India limits the SSDS designation to three years[32] allowing for more frequent reassessment of market conditions. Furthermore, Section 99 in DMCC[33] provides for stringency measures, including the disqualification of the director in case of non-compliance with the conduct requirement or the pro-competition interventions, thereby deterring the directors from allowing anti-competitive within the entity. On the other hand, India's regulatory framework imposes penal fines on the individuals managing the undertaking in case of non-compliance.[34]However, the bill is silent on the disqualification of directors or personal liability beyond monetary fines, thereby resulting in lesser individual accountability.

Singapore

Singapore stands among the few countries that oppose the legislative approach to regulating digital competition, adhering to the *laissez-faire* philosophy, which advocates for minimal government interference in markets. Singapore follows a market-driven approach, conducting market studies to identify any potential competition concerns, actively engaging with the industry stakeholders and formulating guidelines based on the findings. The notable examples

[28] Digital Competition Bill 2024, sch. 1.
[29] Digital Markets, Competition and Consumers Act, 2024, s.6(1).
[30] Digital Competition Bill, 2024, s. 3(2).
[31] Digital Markets, Competition and Consumers Act, 2024, s. 18(1).
[32] Digital Competition Bill, 2024, s.4(9).
[33] Digital Markets, Competition and Consumers Act, 2024, s. 99.
[34] Digital Competition Bill, 2024, s. 27.

of this methodology include the Market study on the online travel booking sector[35]followed by a similar market study on the e-commerce platform[36]in 2020, in response to the growing significance of the sector. Unlike India's regulatory framework, where law is specifically enacted to govern digital platforms, rather than relying on ongoing market assessments. The Competition and Consumer Commission of Singapore (CCCS) indicates that it will continue to do further study and monitor the developments in the area of artificial intelligence (AI) and algorithms before enacting any necessary law.[37]This method highlights Singapore's dynamic regulatory framework, which evolves in response to market needs. Conversely, India's regulations are silent on the treatment in the area of AI. While India specifically provides both qualitative and quantitative thresholds for the designation of the SSDEs,[38] Singapore evaluates such matters based on sector-specific market studies rather than implementing a uniform threshold across all sectors, as done in India.

IV. Uncovering Need and Hidden Dilemmas of the Digital Code in India

The CCI has consistently expressed concern over the anti-competitive behaviour of large digital enterprises; however, the CCI can only intervene and curb such behaviour when an entity is found contravening the law, which is a time-consuming and resource-intensive process with limited remedies, as observed in the following cases.

For instance, In the e-commerce case, Flipkart and Amazon have been accused of entering anti-competitive arrangements with a few favoured vendors by two means i.e., it was identified that Flipkart and Amazon indulge in the practice of deep discounting, where they facilitate deep discounts to a preferred seller, thereby making it difficult for the non-preferred seller to compete with the preferred seller. Further, it has been stated that these platforms give priority listings to these preferred vendors on the website, pushing non-preferred merchants down in the search results for identical items. The ability of Flipkart and Amazon to enforce such anti-competitive policies was facilitated by the significant funding received from their equity investors. This has resulted in the exclusion of the non-preferred sellers from

[35]The Competition and Consumer Commission of Singapore. (n.d.), *CCCS Proposes Guidelines on Price Transparency After Online Travel Study Raises Consumer Protection Concerns*(2019), *available at*https://www.cccs.gov.sg/media-and-consultation/newsroom/media-releases/otb-and-price-transparency-guidelines-30-sept-19 (last visited on July 7, 2025, 6:00 PM).

[36]The Competition and Consumer Commission of Singapore. (n.d.),*Market Study on E-commerce Platforms Recommends Update to Competition Guidelines* (2020), *available at*https://www.cccs.gov.sg/media-and-consultation/newsroom/media-releases/cccs-market-study-on-e-commerce-platforms-recommends-update-to-competition-guidelines (last visited on July 7, 2025, 6:00 PM).

[37]*Ibid.*

[38] Digital Competition Bill, 2024, s.3(2).

competition; ultimately, customers bear the burden through increased prices for goods and services.[39]

In the food delivery platform case, Swiggy and Zomato have been accused of engaging in anti-competitive behaviour through bundling, deep discounting, and the data effects. It has been alleged that these platforms bundle the food order and delivery services thereby making the business user (restaurants and hotels) reliant on the platform for delivery service, effectively restricting the market for new delivery entities. Further, these platforms offer deep discounts to customers on food orders, which are funded by the business users listed on the platform, resulting in siphoning from their pockets. Additionally, Swiggy and Zomato collect data on past purchases from customers and leverage the same data to make targeted offerings to customers on their platforms, without providing the same data to business users, the despite platform's policy suggesting otherwise. This behaviour created an entry barrier for new entities to enter the market, leading to monopolistic usage of data, which further exacerbates the 'network effect'.[40]

In the digital payment platforms case, Google has been accused of anti-competitive conduct by mandating business users of the Play Store to exclusively use its inbuilt payment system for in-app purchases and app purchases. Non-compliance with this mandate results in exclusion from access to the Play Store, which caters to 90% of potential customers in India. Further, Google charges a 30% commission on each transaction made through its payment system; this restricts business users from switching to an alternative payment system, which is a cost-effective payment system in the market. It is further alleged that Google possesses extensive data of the Play Store users, including both personal and financial information, which it does not share with app developers. This creates an unfair advantage for Google, marginalising its competitors and enabling Google to dictate the terms of downstream markets. Moreover, Google can use this data for targeted advertising, fetching additional revenue, and enhancing the quality of its services.[41]

In the case concerning the Android operating system and search engine services, Google has been accused of engaging in anti-competitive practices in the Indian market. It is stated that Google mandates smartphone manufacturers to pre-install Google apps during the manufacturing process. These pre-install apps include bundled Google applications such as

[39] In *Re: Delhi VyaparMahasanghv. Flipkart. Internet Private Limited and Ors.*, Combination Registration No. 40 of 2019dated January 13, 2020.
[40]*National Restaurant Association of India ('NRAI') v. Zomato Limited ('Zomato') & Others,* Combination Registration No. 16 of 2021 dated January 1, 2021.
[41]*XYZ (Confidential) v. Alphabet Inc. and Others.*, Combination Registration No. 07 of 2020dated October 25, 2022.

Play Store, YouTube, Chrome, Gmail, and Meet. Since smartphone manufacturers in India utilise Google‘s Android system, they are prohibited from modifying the Android without Google's prior consent. Additionally, Google requires manufacturers to set its search engine as the default on web browsers and smartphones. Google further consolidates its control over the general search market by using its dominance through the Play Store. This practice is alleged to impose unfair conditions on mobile manufacturers, restricting other entities from entering the market. Moreover, Google by this means restricted multi-homing, fostering consumer inertia, where consumers become accustomed to its apps due to their pre-installation on Android devices.[42] These cases reflect that the ex-post mechanism is insufficient in rectifying the irreparable harm caused by large digital enterprises in the digital market since it fails to effectively address the same recurring anti-competitive behaviour perpetrated by different enterprises or by the same entity. Hence, the ex-ante regulations are necessary to set the rules of the game in advance, ensuring that regulation and restriction are in place even before the contravention of competition law occurs. Ex-ante regulations work on the principle of prevention, aiming to prevent entities from floating the law rather than curing it after the violation.

This principle is engraved in the Digital Competition Bill, 2024, which works based on the ex-ante regulations. This act applies only to the large digital enterprises that are designated as Systemically Significant Digital Enterprises (SSDE) upon meeting the quantitative and qualitative criteria outlined in the Act, provided they offer one of the core digital services stated in the Schedule. However, this does not mean that this act is free of shortcomings, as this act will present three key dilemmas before the CCI. *Firstly*, this act does not adequately consider the pace of development in the digital market; although it may be equipped with modern tools to tackle the current situation, its conventional intent overlooks emerging state-of-the-art, like Artificial Intelligence (AI) as one of the core digital services, making it lack of future-oriented act, the reason for which it has been originally enacted. *Secondly*, the act lays down a threshold for designating an enterprise as a ‘Systematically Significant Digital Enterprise’ (SSDE), drawing the threshold from the Digital Market Act, of 2023; however, it overlooks the raison d'être behind setting such criteria in DMA, which otherwise could lead to arbitrary order and impede the digital progress of our country. *Thirdly*, although all the legislation across the globe shares the same goal of curbing anti-competitive behaviour, however; it can lead to multi-jurisdictional

[42]*Google LLC &Anr. v. Competition Commission of India & Ors*., Competition Appeal (AT) No.01 of 2023dated March 29, 2023.

problems, as different legislation in different countries employs different definitions and thresholds for designating enterprises with market power under the law.

Incorporating Artificial Intelligence into a Competitive Framework

To address the first dilemma, it is essential to examine its underlying reasoning for incorporation. The Digital Competition Bill, 2024 (DCB), draws inspiration from the Digital Market Act, 2023(DMA), particularly in its application of ex-ante regulation to predetermined core digital services[43], however, India's adoption of predetermined core digital services categories has overlooked the additional flexibility incorporated in the European law, a feature absent in the Digital Competition Bill, 2024. Under the DMA, an entity is designated as a gatekeeper based on both qualitative and quantitative criteria[44], as well as residuary powers[45]of the European Commission under the Digital Market Act, 2023. One of the qualitative criteria[46]for designating an entity as a gatekeeper is that it must hold a durable position in its market or it is expected to enjoy such a position in the near future. This means that even if the entity is not currently dominant but can become dominant in the future, it falls within the purview of the act. Additionally, Article 3(8)[47] allows the European Commission (EC) to designate entities as gatekeepers by considering factors such as size, number of users, network effects, scale of the entity, etc. Moreover, Article 19(1)[48] empowers the commission to introduce new core digital services following a market investigation. A combined reading of these sections grants the commission the authority to expand the scope of the core digital services list to incorporate Artificial Intelligence without requiring legislative amendments, providing greater flexibility and adaptability in response to the evolving dynamic of the digital market.

The Digital Markets, Competition and Consumers Act, 2024(DMCC) enacted in the UK adopts open-ended regulation, without prescribing a predetermined list of core digital services that come within its jurisdiction. This law provides flexibility to the competition authority at the time of designating an entity with the strategic market status, under the law authority must assess whether the entity has attained substantial market power, and to analyse the substantial market power, the authority must adopt the approach of a future-looking

[43] Digital Market Act, 2022, art. 2(2).
[44] Digital Market Act, 2022, art. 3(1) & (2).
[45] Digital Market Act, 2022, art. 3(8).
[46] Digital Market Act, 2022, art. 3(1).
[47] Digital Market Act, 2022, art. 3(8).
[48] Digital Market Act, 2022, art. 19(1).

assessment on a case-by-case basis.[49]This approach empowers the authority to expand the scope of core digital services by incorporating new digital services (Artificial Intelligence), as per the requirements of the time.

In contrast, the Digital Competition Bill, 2024 doesn't incorporate such flexibility, as the power to amend the list of core digital services rests solely with the central government. The CCI does not have the authority to amend the list of core digital services prescribed in the schedule. Even the residuary clauses given in the schedule limit the type of core digital services that can be considered within the purview of this code. In the Digital Competition Bill, 2024, AI should be designated as a core digital service due to the inherent characteristics of the digital market, where a 'winner takes all' dynamic creates entry barriers for new entities. Additionally, feedback loops and enormous data that organisations gather through first-movers advantage enable them to enhance their services further and offer tailor-made services to users' desires. These factors render an entity dominant in the AI market, potentially leading to anti-competitive behaviour.[50]Alternatively, the Digital Competition Bill, 2024, must specifically empower the CCI to expand the scope of the core digital services as needed. This inclusion would align the law at par with international standards, as given in the EU and UK, and it would make the CCI more agile towards the changing needs of the digital market.

Harmonizing India's End-User Thresholds with Global Benchmarks

To address the second dilemma, it is significant to understand that the Digital Competition Bill, 2024, incorporates two tests, namely the Significant Financial Strength and Significant Spread Test, to designateam entity as a Systematically Significant Digital Enterprise (SSDE) outlined under Sections 3(2)(a)[51] and (2)(b)[52] respectively. A uniform threshold has been established in the test, irrespective of the core digital services provided by the platform. This methodology was inspired by the Digital Market Act, 2023; however, the law overlooked the rationale behind setting such threshold limits for end users in the EU. Article 3(2)(b)[53] in the Digital Market Act,2023 provides that an enterprise must have 45 million monthly active end-users in the EU for designation as a gatekeeper. This threshold relies on the principle that

[49] Digital Markets, Competition and Consumers Act, 2024, s. 5.
[50]OECD, *Artificial intelligence, data and competitio*n, 18 OECD(May 24, 2024), *available at*https://doi.org/10.1787/e7e88884-en (last visited on July 7,2025, 6:00 PM).
[51] Digital Competition Bill, 2024, s.3(2)(a).
[52] Digital Competition Bill, 2024, s.3(2)(b).
[53] Digital Market Act, 2022, art. 3(2)(b).

10% of the EU's total population should be active end-user.[54] This means that if an enterprise has 10% of the EU's total population as active end users in a month, it will meet one of the quantitative criteria for designation.

In contrast, Section (2)(b) of the Digital Competition Bill, 2024[55], requires enterprises to have at least 1 crore (10 million) end users for the designation as SSDEs. This threshold does not align with the 10% principle, while considering India's total population, which, as per the United Nations, currently stands at 144 crores.[56]Even if we use the internet penetration rate, which stands at 55.3%of the total population[57], equivalent to over 72 crore (720 million) people, the principle of 10% still demands a higher threshold than 1 crore (10 million) users. The establishment of a lower threshold for the end user in the Digital Competition Bill (DCB) would posit two dilemmas before the CCI. *Firstly*, a lower threshold of the end-user may bring such entities within the purview of the law that operates in core digital services where such threshold (10 million) is considered average, such as social media networking and search engines. *Secondly*, this threshold of end users might preclude such entities from the jurisdiction of a law that has market power in their core digital services but retains a small number of end users i.e., below the prescribed. These two scenarios could frustrate the objective for which the law has been enacted.

To resolve the complex scenario, it is suggested that the law should consider aligning with international practices, where the threshold of end-users is based on 10% of the total population or 15% of the total population.[58]Alternatively, a separate quantitative threshold could be prescribed for each core digital service; the rationale for this methodology stems from the varying internet user penetration rates across core digital services, such as the internet user penetration rate for online food delivery is projected to be at 20.2% in 2025[59], while internet user penetration for social media networks is significantly higher at 72.08% in

[54] ACCC*, Digital platforms services inquiry*, Interim report 5, Report on social media services(November 11, 2022), *available at*https://www.accc.gov.au/about-us/publications/serial-publications/digital-platform-services-inquiry-2020-25-reports/digital-platform-services-inquiry-september-2022-interim-report-regulatory-reform (last visited on July 7,2025, 6:30 PM).
[55] Digital Competition Bill, 2024, s.3(2)(b).
[56]Khungar, S., "India's Population and Growing Concerns", *The Times Of India*, June 26, 2024, *available at*https://timesofindia.indiatimes.com/speaking-tree/daily-ecstasy/indias-population-and-growing-concerns/art.icleshow/111283374.cms (last visited on July 8,2025, 6:30 PM).
[57]Tanushree, B., "Internet Penetration Rate in India 2014-2025", *Statista* (May 26, 2025) , *available at*https://www.statista.com/statistics/792074/india-internet-penetration-rate/ (last visited on July 7, 2025, 1:00PM).
[58]*Supra* Note 54.
[59]Statista Market Forecast, "Online Food Delivery – India", *Statista,* (May 2025), *available at*https://www.statista.com/outlook/emo/online-food-delivery/india (last visited on July 8, 2025, 4:30 PM).

2025.[60] These disparities in user penetration rates underscore the necessity for a different quantitative criterion of end-user for each core digital service. The lawmakers could also explore one more approach to resolve the dilemma by drawing inspiration from the American Innovation and Choice Online Act, 2021 of USA, where both domestic and worldwide end users are considered for the designation of the enterprises as a covered platform.[61]The Digital Competition Bill, 2024, could similarly consider the worldwide end user, rather than relying just on Indian-based end users, as a criterion for the designation of enterprises as SSDEs. This approach would make the significant spread test more rational and pragmatic, avoiding any arbitrary application.

Bridging Global Regulatory Gaps

The rise of large digital enterprises is a global phenomenon, prompting countries to enact laws to regulate their acts. However, this mechanism resulted in discrepancies in laws concerning digital enterprises across the globe, raising three dilemmas before the CCI. *Firstly,* different legislation utilises varying manifestations of power and thresholds, both financial and user-based, to impose ex-ante obligations on the enterprises (referred to as SSDE in India). This variation may lead to inconsistencies in designation, where an enterprise might be subject to an ex-ante obligation in one country but not in another. *Secondly,* the divergence in legislation across the world results in differing obligations for the same digital enterprises; some competition authorities employ tailored obligations specific to each entity, while others enforce predetermined obligations uniformly on the entity. This variation enhances the compliance burden on an entity, impeding economic stability and growth. *Thirdly,* some jurisdictions provide for proactive assessment to authority to examine whether ex-ante rules could be imposed on an enterprise[62] while other legislation imposes such procedural obligations on entities through self-assessment[63]; these inconsistencies compel entities to shift their business activities to the lenient regulatory regime.

To tackle the multi-jurisdictional challenges faced by the CCI, it is suggested that Indian law be aligned with international standards, minimising discrepancies within the legislation across the globe and creating a uniform compliance procedure for enterprises, thereby

[60]Tanushree, B., "Social Network Penetration India 2018-2028", *Statista*, (December 18, 2023) , *available at* https://www.statista.com/statistics/240960/share-of-indian-population-using-social-networks/ (last visited on July 8, 2025, 6:30 PM).
[61] House Judiciary Committee, *H. Rept. 117-655 - American Innovation and Choice Online Act*, (H.R.3816) p. 53, *available at*https://www.congress.gov/committee/house-judiciary-committee/hsju00(last visited on July 7, 2025, 6:30 PM).
[62] Digital Markets, Competition and Consumers Act, 2024, s.9.
[63] Digital Market Act, 2022, art.3(3).

advancing the objective of ease of doing business in India.[64] Additionally, India should consider signing a bilateral and multilateral covenant with various countries. These covenants would allow CCI to take cognisance of information submitted by the same enterprises to other competition authorities worldwide, thereby preventing enterprises from escaping from the penalties by submitting conflicting information. This methodology would also foster certainty and reduce the compliance burden on the enterprise.

V. Conclusion

The manifestation of competition in the digital world diverges from the traditional paradigms, as enterprises in this domain are not circumscribed by the conventional boundaries of the market, thereby expanding the scale and scope of the business, which, in turn, raises the competition concern. The digital market subtly challenges the idea of dominance, compelling a shift in regulatory approaches. Unlike traditional law, where penalties are imposed on the entity when it abuses its dominance; however, ex-ante regulation empowers the competition authority to intervene before an entity becomes dominant. However, this preventive approach carries a risk of false positives, where the entity not only suffers monetarily but also reputationally, without not engaging in anti-competitive activity. Therefore, it is necessary that any law enacted need to be practical, transparent, and future-orientated. To ensure that the Digital Competition Bill, 2024, possesses these qualities, it is essential to recognise artificial intelligence as a core digital service, given its potential for a sizeable impact across various economic sectors. Further, reforming the end-user threshold is necessary to prevent the law from inadvertently bringing small digital enterprises within its jurisdiction, and the law should also be at par with international standards to effectively address the multi-jurisdictional complexities that may arise before the Competition Commission of India. These reforms will enable the law to adopt both a facilitative and regulatory approach, thereby advancing the aim of consumer interest and viable competition.

[64]Ministry of Commerce and Industry, *Centre Spearheads Several Initiatives under Ease of Doing Business and Reducing Compliance Burden Aimed at Creating a Conducive Business Environment* (February 10, 2023), *available at*https://pib.gov.in/PressReleasePage.aspx?PRID=1898016(last visited on July 7, 2025, 6:30 PM).