E-COMMERCE BIAS AND PREFERENTIAL TREATMENT

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ABSTRACT

India's e-commerce industry has contributed to the transformation of retail markets through its optimal consumer choice and ease of use. However, along with this growth and transformation comes the constant worries about bias and preferential treatment in online marketplaces. This study looks into how companies like Amazon and Flipkart are alleged to unfairly benefit from their own affiliated sellers and group businesses through practices like discounts and exclusive agreements. The study shows how these dynamics reinforce one another to marginalise small traders by identifying the practices within the broad legal framework of competition law. The study contends that Myntra's preferential treatment is a competition law issue with systematic implications for neutrality, market access and long-term consumer welfare in addition to being an FDI concern.

Keywords: Preferential treatment, bias, e-commerce, marketplace, competition.

1. INTRODUCTION

The foundation of a healthy market is competition. Maintaining fair competition is crucial in digital marketplaces, where a small number of platforms serve as effective middlemen between buyers and sellers.[1] Unlike traditional retail, online marketplaces also control algorithms that determine visibility, the logistics that decide delivery and the data flows that shape consumer demand. When competition is preserved, digital platforms can improve consumer choice and reduce transaction costs. However, when competition is ruined, the same platforms can strengthen their dominance and limit access for smaller sellers.

India's e-commerce sector illustrates this tension. Amazon, Flipkart and Myntra have created a new set of opportunities for businesses, but these platforms also have had track records of favouring their own group entities or preferred partners at the expense of independent sellers.[2] Such practices, raise not only questions of foreign direct investment (FDI) compliance, but also concerns about platform neutrality and long-term market structure.

The paper analyses the development of the cases surrounding Amazon & Flipkart and Myntra to argue that preferential treatment is not a marginal or technical issue, but a systemic threat to competition in digital marketplaces. In order to investigate how these biases reinforce one another to create dominance and provide a distorted form of competition, the study talks about several types of bias.

2. RESEARCH QUESTIONS

1. Is the current Indian legal framework ready to address anti-competitive practices in e-commerce markets?

2. Do Amazon and Flipkart's discounting and preferential treatment amount to anti-competitiveness, or do they help improve consumer welfare?

3. Does Indian Competition Law focus on protecting small competitors?

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[1] Podszun, R., & Kreifels, S. (2016). Digital platforms and competition law. J. Eur. Consumer & Mkt. L., 5, 33.

[2] *From Myntra To Amazon, Flipkart, Zepto, Ola & Uber: How E-Commerce Giants Are Caught In Web Of Unfair Trade Practices*, REPUBLIC WORLD (July 23, 2025), https://www.republicworld.com/business/from-myntra-to-amazon-flipkart-zepto-ola-uber-how-e-commerce-giants-are-caught-in-web-of-unfair-trade-practices.

4. What can India learn from comparative frameworks like the EU's Digital Markets Act with regards to regulating e-commerce platforms?

3. RESEARCH METHODOLOGY

Using doctrinal analysis, the paper also takes a look at the foreign legal framework governing e-commerce and competition law while also reviewing significant parts of the Competition Act, 2002, and India's FDI policies. In addition to this, orders and investigations conducted by the CCI and ED were examined in order to understand how regulators have interpreted the law. Secondary sources like academic articles, papers and credible news coverage were referred to capture the scope of e-commerce bias and preferential treatment. By using comparative and analytical approaches to identify bias mechanisms and understand their effects, the research is largely qualitative, focusing on legal interpretation and conceptual mapping to develop a view of how preferential treatment in India's e-commerce sector should be understood and addressed.

4. LITERATURE REVIEW

Khandelwal, Pankhudi. "In this paper, the author examines the Draft Digital Competition Bill, 2023 along with its implications in order to regulate digital markets. The DDCB draws on the principles and regulations of the European Union's Digital Markets Act as it introduced ex-ante obligations for Systemically Significant Digital Enterprises. This paper analyses such obligations against the CCI's past ex-post decisions in various cases."[3]

Etro, Federico. "The author has reviewed key theoretical and empirical literature on hybrid e-commerce marketplaces, while focusing on Amazon's double role as both, a platform host and competing seller. He calls for a nuanced policy which carefully balances market structures, consumer impact and innovation before making a decision on whether intervention would help of become a hurdle welfare output."[4]

Wang, XuRui. "This paper explores how digital platforms use self-preferential treatment in order to favour their own services and products over the products and services of third parties.

[3] Pankhudi Khandenwal, *Tying, Self-Preferencing and the Digital Competition Bill: A Changing Landscape for Competition Intervention?*, 19 IJLT (2024), https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1457&context=ijlt.

[4] *e-Commerce Platforms and Self-preferencing - Etro - 2024 - Journal of Economic Surveys - Wiley Online Library*, https://onlinelibrary.wiley.com/doi/full/10.1111/joes.12594 (last visited Aug. 30, 2025).

The author identifies the anchoring effect while arguing that self-preferencing should be recognized as an independent abuse of dominance. The paper further recommends adopting the important essential facilities doctrine for data Updating how we judge market dominance to tackle the leverage effect and keep super-platforms in check."[5]

5. GROWTH OF E-COMMERCE SECTOR

5.1. Historical Trajectory

The trajectory of India's e-commerce sector can be traced back to the launch of Flipkart in 2007, which pioneered modern online retail with an initial effort to sell books and subsequently expanded into categories of apparel, electronics, and home goods.[6] The entry of Amazon India into the Indian e-commerce scene in 2013 radically transformed the industry with its global marketplace model, enormous investments in logistics/warehousing, and aggressive marketing methods to acquire market share.[7] In addition to the e-commerce landscape changing, the demonetisation process and the launch of Reliance Jio's affordable data services in September 2016 represent an important turning point in e-commerce, sharply increasing digital adoption across the country. Combined with the rapid rise of the Unified Payments Interface (UPI), these developments created an enabling environment for explosive growth in digital commerce, fundamentally reshaping consumer behaviour, payment systems, and retail markets in India.

5.2 Market Size, Growth & Major Players

India's e-commerce market has developed into one of the fastest-growing e-commerce markets in the world, with a valuation of USD 57–60 billion in 2023, expected to cross USD 300 billion by 2030, driven by internet penetration, digital payments, and consumer trust in online shopping experiences.[8] A few dominant players, primarily Amazon, Flipkart (Walmart-owned), and Reliance JioMart, command a substantial market share, creating an oligopolistic structure in the sector. According to industry data, Amazon and Flipkart (owned by Walmart) represent over 60% of the online retail market.[9] While Reliance JioMart (part of Jio and

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[5] *SELF-PREFERENTIAL TREATMENT OF DIGITAL PLATFORMS AND ITS ANTI-MONOPOLY REGULATION*, 3 WJSL (2025), http://www.upubscience.com/News11Detail.aspx?id=1489&proid=51.

[6] The Flipkart Timeline - Scroll through All Its Milestones Here, https://stories.flipkart.com/flipkart-timeline-milestones/

[7] The Great Leaders Series: Jeff Bezos, Founder of Amazon.Com, https://www.inc.com/30years/articles/jeff-bezos.html

[8] India Brand Equity Foundation, E-Commerce, IBEF (2024), https://www.ibef.org/industry/ecommerce

[9] Sarvesh Mathi, How Amazon and Walmart's Flipkart Continue to Skirt India's E-Commerce Laws, MEDIUM

Reliance Group) is significantly establishing its presence in groceries and everyday essentials. This concentration has raised important debates on market power, competition, and the need for regulatory oversight to balance innovation with fairness in digital commerce.

5.3. Drivers & Broader Impact

The rapid expansion of India's e-commerce sector has been driven by multiple interrelated factors:

First, digital infrastructure improvements, particularly the rollout of affordable high-speed mobile data by Reliance Jio, have drastically increased internet access in urban and rural areas alike, enabling millions of new users to shop online.

Second, the adoption of digital payments, led by the Unified Payments Interface (UPI), has simplified transactions and built consumer confidence in online platforms.

Third, government initiatives such as Digital India and efforts to formalise MSMEs through e-commerce platforms have further boosted participation in the digital marketplace.[10]

These drivers collectively enhance consumer access, choice, and efficiency, allowing users to explore a wide range of products across categories, benefit from competitive pricing, and receive goods through efficient logistics networks. Moreover, the sector's growth has empowered small sellers and regional businesses to reach pan-Indian markets, contributing to economic inclusion and diversifying the retail ecosystem.

5.4 Role of E-Commerce: Access, Choice & Efficiency

E-commerce in India has greatly impacted consumer behaviour, empowering the consumer through greater access, choice and improvements in overall efficiency in the retail ecosystem. Online platforms eliminate distance advantage and give access to consumers from Tier-II, Tier-III, and rural areas of the economy to products and brands that were previously unavailable locally. The range of offerings, ranging from electronics and fashion to groceries and niche products, has expanded consumer choice, while comparison tools and transparent pricing

(Feb. 21, 2021), https://sarveshmathi.medium.com/how-amazon-and-walmarts-flipkart-continue-to-skirt-india-s-e-commerce-laws-7ac0d0246314.

[10] Ibid.

promote competitive pricing. E-commerce improves efficiency while removing barriers to time and cost by allowing consumers to transact and pay and be delivered quickly by complete logistics operations. Furthermore, e-commerce reduces search and transaction costs for both buyer and seller. Furthermore, above all, small and medium-sized enterprises (SMEs) and local kirana stores are utilising e-commerce and digital platforms to reach a larger market area, enabling inclusive growth and democratising the ability to grow within the retail economy.[11]

6. RELEVANT PROVISIONS OF THE COMPETITION ACT, 2002

The Competition Act, 2002, though enacted in a largely pre-digital era, has evolved to address the challenges of platform-driven markets. E-commerce platforms like Flipkart and Amazon operate in ecosystems where network effects, data consolidation, and cross-border capital flows create forms of dominance and coordination that do not always resemble traditional brick-and-mortar markets.

Sections 3 and 4 of the Act provide the legal basis to evaluate anti-competitive practices and abuse of dominance in India's digital economy.

6.1. Section 3: Anti-Competitive Agreements

Section 3 prohibits agreements[12] that result in, or are likely to result in, an appreciable adverse effect on competition (AAEC). It distinguishes between horizontal agreements like cartels amongst competitors, versus vertical agreements that include arrangements at different layers of the supply chains (e.g., manufacturer-retailer).

In the e-commerce context, vertical restraints, like exclusive agreements, price parity arrangements, and preferential listing arrangements have all come under scrutiny by the Competition Commission of India (CCI). For example, in All India Online Vendors Association (AIOVA) vs. Flipkart, vendors argued that deep discounting and preferential treatment of selected sellers was anti-competitive vertical agreement.[13]

Notably, e-commerce platforms have also raised concerns of hub and spoke cartels, where platforms act as a intermediary enabling indirect coordination between sellers. This "theory of

[11] India Brand Equity Foundation, E-Commerce, IBEF (2024), https://www.ibef.org/industry/ecommerce
[12] The Competition Act, 2002, §3, No.12, Acts of Parliament, 2003 (India).
[13] All India Online Vendors Association v. Flipkart, Case No. 20 of 2018, Order dated Nov. 6, 2018, Competition Commission of India, https://www.cci.gov.in/images/antitrustorder/en/2020181652328846.pdf

harm" has precedent in traditional retail, where a retailer facilitates tacit collusion without makers or sellers directly agreeing to anything.

6.2. Section 4: Abuse of Dominance

Section 4 prohibits abuse of a dominant position.[14] While mere dominance can not be said to be unlawful, it is illegal to abuse such a position, for example, through predatory pricing, refusal to deal, or unfair trade conditions.

In the digital sector, dominance is often linked less to price control and more to data power, algorithmic preference, and network effects. For example, in Matrimony.com v. Google (2018),[15] the CCI found Google to be guilty of search bias and self-preferencing. The CCI ruled that the design of an algorithm can denote abuse, particularly if the design disadvantages competitors.[16]

Similar reasoning has influenced decisions in other sectors. In the context of the proceedings against Ola/Uber, the CCI was deliberating on whether surge pricing, which was based on an algorithm, could amount to coordinated behaviour. Likewise, in Bharti Airtel v. Reliance Jio (2017), acute debate arose on the rise of Jio and whether the pricing was deemed a deep discount, which amounted to predation, or merely having ventured into the telecommunications sector with low pricing.[17] These cases reflect a doctrinal consistency; while the Act applies uniformly, its application in digital markets requires sensitivity to platform economics and algorithmic conduct.

6.3. Digital Market Complexities

Applying sections 3 and 4 to e-commerce presents unique issues and challenges. Traditional competition doctrines, built around physical markets, often struggle to capture the dynamics of platform economies. There are three major issues to consider;

1. **Data as a Source of Market Power:** Market dominance today is not merely about price

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[14] The Competition Act, 2002, §4, No.12, Acts of Parliament, 2003 (India).
[15] Matrimony.com Ltd. v. Google LLC, Case Nos. 07 & 30 of 2012, Competition Comm'n of India (Feb. 8, 2018).
[16] Ibid.
[17] Bharti Airtel Ltd. v. Reliance Jio Infocomm Ltd., Case No. 03 of 2017, Competition Comm'n of India (June 6, 2017).

or output but the control over user data and how that data can be used across multiple markets.[18]

2. **Algorithmic Governance:** Many platforms utilise algorithms for search ranking, recommendations, and pricing. While platform's algorithmic forms of governance drive user efficiency (as the intended purpose), they do come with the risk of obscuring anti-competitive practices such as self-preferencing or selective discrimination.[19]

3. **Overlapping FDI and competition law:** A number of deep discounting strategies are underpinned by foreign direct investment which creates a friction between regulation and policy: while FDI policy encourages strengthened digital commerce by allowing for capital inputs, competition law must be used to assess whether such funding allows for predatory strategies that are harmful to markets.

The recent inquiries by the CCI into Flipkart and Amazon illustrate these complexities; practices such as exclusive tie-ups, preferential treatment of sellers, and algorithm-driven visibility are neither traditional cartels nor straightforward abuse, yet they test the boundaries of competition law. The evolving jurisprudence suggests that Indian competition law is being reshaped through its interaction with digital markets.

7. MARKETPLACE V INVENTORY FDI RULES

Foreign Direct Investment (FDI) policy in India has profoundly impacted the operational models of e-commerce platforms in the country. The Government of India has continually refined its regulatory approach through several press notes, under the Foreign Exchange Management Act, 1999 (FEMA), to fulfil the twin purpose of attracting foreign capital and protecting domestic traders. The two most significant reforms in this context are Press Note 2 of 2018 and Press Note 3 of 2020, which clarified the scope of permissible activities in e-commerce.

At the core of these rules lies the distinction between marketplace and inventory-based

[18] Eeckhout, Jan and Veldkamp, Laura, Data and Market Power (May 2022). CEPR Discussion Paper No. DP17272, Available at SSRN: https://ssrn.com/abstract=4121456

[19] Kozlova, M., Kozhemyakin, D., Sergacheva, O., & Bortenev, A. (2021). The influence of digital platforms and algorithms on legal regulation of competition. In SHS Web of Conferences (Vol. 109, p. 01020). EDP Sciences.

models[20]:

- Marketplace Model: Under this structure, e-commerce entities provide an information technology platform to act as a facilitator between buyers and sellers.[21] 100% FDI is permitted under the automatic route for marketplace entities, but they are prohibited from influencing the sale price of goods or providing direct inventory to consumers. The model is meant to ensure neutrality of platforms as intermediaries.

- Inventory-Based Model: In this model, the e-commerce entity owns the goods and sells them directly to consumers.[22] FDI is not permitted in inventory-driven retail (except in certain single-brand retail operations subject to conditions), as such operations are treated on par with multi-brand retail trading, which remains heavily restricted.

Press Note 2 (2018) further tightened the marketplace framework by:

1. Prohibiting e-commerce platforms from exercising ownership or control over inventory.

2. Restricting equity participation or control over seller entities from creating indirect inventory models.

3. Preventing exclusive arrangements between platforms and sellers that limit consumer choice.[23]

Press Note 3 (2020), while primarily issued in the context of national security concerns regarding FDI from neighbouring countries, also indirectly affected the e-commerce space by requiring prior government approval for investments from countries sharing land borders with India. This marked a shift toward heightened scrutiny of foreign capital flows, reflecting the geopolitical sensitivity of digital commerce.[24]

[20] Hopstack, Marketplace Model vs. Inventory Model in E-commerce (June 30, 2022), https://www.hopstack.io/blog/marketplace-model-vs-inventory-model-ecommerce
[21] Ibid.
[22] Ibid.
[23] Department of Industrial Policy & Promotion, Press Note No. 2 (2018 Series): Review of Policy on Foreign Direct Investment in E-commerce (Dec. 26, 2018), https://www.argus-p.com/uploads/km_updates/download/1566392880_100__Press_Note_2%282018%29-DIPP.pdf
[24] Department for Promotion of Industry & Internal Trade, Press Note No. 3 (2020 Series): Information Technology (IT) Sector, Including E-commerce (Apr. 17, 2020), https://dpiit.gov.in/sites/default/files/pn3_2020.pdf

8. CHALLENGES UNIQUE TO ONLINE PLATFORMS

E-commerce platforms introduce unique regulatory challenges that differ significantly from traditional brick-and-mortar markets. While competition law principles remain constant, their application in digital markets is complicated by novel features such as platform intermediation, data-driven business models, and hybrid roles of operators. The the key competition-related concerns are:

8.1. Deep Discounting

Discounted prices over time in online marketplaces may be one of the most controversial and debated practices. While discounts are not anti-competitive in themselves, concerns arise when they take the form of predatory pricing, that is, pricing below cost with the intention of eliminating rivals. Such conduct causes a foreclosure on the market and ultimately lessens choice for the consumer by causing smaller sellers or potential new entrants to be unable to compete.

Competition authorities globally, which include the Competition Commission of India (CCI) and the European Commission, emphasise that persistent below-cost selling, especially when funded by deep-pocketed investors, can distort the competitive process even if consumers benefit in the short term. The challenge lies in distinguishing pro-consumer efficiency gains from exclusionary strategies designed to cement dominance.

8.2. Preferential Treatment & Self-Preferencing

Another major concern is the preferential treatment of sellers on a platform. Because marketplaces serve as intermediaries, they are expected to be neutral. Even if platform providers adhere to their terms of service, they may still favour certain vendors through search result & algorithm preferences, prominence in search results, preferential visibility (logistical advantages), etc. Such preferential treatment compromises neutrality and fairness, making for an uneven marketplace.[25]

Closely related is self-preferencing, where the platform privileges its own affiliated products or services over independent sellers. The issue here is the conflict of interest between the

[25] Hoekman, B. M. (1998). Competition policy and preferential trade agreements. Economic Development Institute of the World Bank.

platform's dual role as an impartial facilitator and its commercial incentive to promote its own interests. Global debates, which include cases like the EU's Google Shopping decision (2017), illustrate how self-preferencing undermines competition by steering consumer traffic in discriminatory ways.

8.3. Dual Role Dilemma

The dual-role dilemma arises when an e-commerce operator simultaneously functions as both a marketplace and a competitor on its own platform. In principle, this creates inherent risks of conflict: access to granular data about third-party sellers could enable the platform to replicate or undercut their offerings, thereby disadvantaging competitors who rely on the same platform for market access.

The CCI has noted similar concerns in cases involving ride-hailing aggregators, such as the Ola/Uber investigation (2017), where questions of platform neutrality and information asymmetry were raised.[26] Although the factual setting differs, the doctrinal issue remains the same whether a platform can be trusted to remain impartial while also competing with those who depend on it.

8.4. Data Dominance

Data has emerged as the central competitive asset in digital markets. The ability of platforms to collect, analyse, and monetise vast volumes of consumer and seller data confers significant informational advantages. This can translate into entry barriers for smaller players who lack comparable data resources, thereby reinforcing the dominance of incumbents.[27]

Internationally, competition regulators are increasingly treating data accumulation as a source of market power, with the German Federal Cartel Office's decision in the Facebook Data Case (2019) serving as an example.[28] In the Indian context, similar debates have begun to surface as

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[26] Meru Travel Solutions Pvt. Ltd. v. ANI Technologies Pvt. Ltd. & Ors., CCI Case Nos. 25/2017–28/2017, Final Order (June 20, 2018), Competition Commission of India, https://www.cci.gov.in/images/antitrustorder/en/252017-262017-272017-and-2820171652332138.pdf

[27] Kerber, W. (2016). Digital markets, data, and privacy: competition law, consumer law and data protection. Journal of Intellectual Property Law & Practice, jpw150.

[28] Anne C. Witt, Excessive Data Collection as Anticompetitive Conduct: The German Facebook Case, NYU Jean Monnet Working Paper No. 1/2020 (Feb. 6, 2019), https://jeanmonnetprogram.org/paper/excessive-data-collection-as-anticompetitive-conduct-the-german-facebook-case/

platforms consolidate data across multiple services.

8.5. FDI Uncertainty

Finally, regulatory uncertainty surrounding FDI in e-commerce adds a structural layer of complexity. Frequent changes in policy particularly in defining permissible activities for marketplace versus inventory models generate compliance challenges for foreign-funded platforms. From a competition law perspective, such uncertainty can indirectly shape market outcomes; platforms with better resources to adapt quickly may gain disproportionate advantages, while smaller players or domestic startups face greater regulatory hurdles.[29]

This intersection of investment regulation and competition law underscores the hybrid nature of e-commerce governance in India, where concerns about market dominance are not only economic but also tied to broader policy considerations about foreign capital and domestic industry protection.

9. POLICY AND COMPARATIVE PERSPECTIVE

9.1. Enforcement Challenges for the Competition Commission of India

Established under the Competition Act, 2002, the Competition Commission of India plays an important and central role in the antitrust arena of India. The commission has been against multinational giants like Google, Amazon and Flipkart which demonstrates the willingness of the commission to engage itself with complex and difficult questions of dominance and abuse in the economy, especially in the digital economy. Inspite of such crucial and important efforts, the enforcement capacity of the commission has been questioned time and again. The systematic issues and problems faced by it reflects institutional constraints as well as the structural difficulties of applying orthodox competition law rules and regulations to the fast developing and the new-age digital markets.

One of the biggest issues that the commission has faced is regarding the collection of penalties, along with the delay in the judicial or appellate process. If the data from 2011 till 2025 is analysed, the Commission has imposed fines totalling more than ₹18,000 crore, but only

[29] Choudhury, R. N. (2015). India's FDI policy on E-commerce: Some Observations. Discussion Paper DN2015/03.

around 2% to 2.5% of the said amount was actually realized.[30] The major reason is the expanded litigation time period, be it the National Company Law Appellate Tribunal (NCLAT), or the High Court and the Supreme Court wherein the enforcement of the orders released by the commission is stayed or modified significantly and the result of it is that deterrence is softened which in turn undermines the credibility and authority of the commission. This kind of dilution in penalties ultimately lets the big names continue its practices of dominance as they build themselves around the perception that they can do whatever they want because every penalty that is imposed on them can be negotiated and be done away with, using different tactics.

Another major hinderance is the capacity and vacancy of the Competition Commission of India. Everyday sees a new type of collusion, self-preferencing and market abuses involving digital data and economy, wherein the country requires more and more expertise when it comes to enforcement as traditional methods of legal framework contains loopholes. The Commission could have been competent enough to tackle these issues but problems arise because it continues to remain under-resourced. The Commission operates significantly below its sanctioned or on-paper strength. If data since the 2014 is looked at, the Commission has, till date, not operated at its maximum capacity. The devastating point for maintenance of a healthy competition in the market is that the maximum capacity of the Commission since 2014, has touched a mark of only 67% of its actual maximum capacity.[31]

Along with the above issues, an additional issue is the jurisdictional overlaps with other regulators like, the Department for Promotion of Industry and Internal Trade (DPIIT), the Telecom Regulatory Authority of India (TRAI), and the Reserve Bank of India (RBI). These various departments and bodies face jurisdiction issue in every case where even a tiny technicality kicks in. For example, problems pertaining to foreign direct investment in e-commerce platforms usually falls under DPIIT's jurisdiction but the consumer protection and pricing disputes arising out of the same problem can be seen as falling under the Commission's jurisdiction. Although the Supreme has held that the Competition Act is a special statute[32] but there are sector and cases where the jurisdictional overlaps create a scope for forum shopping and also risk outcomes that are highly inconsistent which results in a weakened unity in India's

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[30] *Annual-Report-2022-231703571209.Pdf*, https://www.cci.gov.in/public/images/annualreport/en/annual-report-2022-231703571209.pdf (last visited Aug. 30, 2025).
[31] *Ibid.*
[32] Bharti Airtel case, (2019) 2 SCC 521, para 109.

competition law regime.

While the Commission has constantly proved its commitment towards challenging powerful corporations, the ineffectiveness in its enforcement makes penalty realization system weak, which undermines its resource utilizations and also overlaps jurisdictions. Until and unless these challenges are addressed through legislative amendments or reforms as well as institutional strengthening, risk in losing relevance in the governance of India's new-age digital economy.

9.2 Digital Competition Bill, 2023 and its Withdrawal

The Digital Competition Bill, 2023 was a representation of a shift in India's approach towards handling the ever-evolving digital market. The bill's goal was to move from an ex-post to ex-ante regulatory framework for the Indian Competition Law scenario.[33] The Competition Act, 2002 required the Commission to investigate any alleged anti-competitive practices after such practices would have taken place. But the new Bill's aim was to proactively regulate the Systemically Significant Digital Enterprises (SSDEs). These SSDE's would have been subjected to a stack of obligation, binding in nature, which would ultimately prohibit practices such as self-preferencing, anti-steering, and bundling of services. Additionally, the Bill had a goal to extend upto 10% of the alleged enterprise's global turnover when it came to penalties and this was a sign of the intention of the country to introduce enforcement structures and tactics that are found in the European Union's Digital Markets Act.[34]

However, inspite of having ambitious goals to the Competition landscape in India, the Bill had to face a massive and widespread opposition. Ultimately, the bill was withdrawn in the August of 2025. The most rigid opposition came from the major global tech firms like Google, Amazon, Apple, and Meta but this is not the opposition. The domestic players were also opposing the bill, mainly the ones in the food delivery and hospitality sectors. The main objection was orbiting around the concern of ex-ante rules because, as per the opposing parties, if these rules are applied too broadly, they could supress innovation and invention, increase cost of compliance and also reduce the foreign investments in India and its digital economy. Even Small and Medium Enterprise (SMEs) and start-ups expressed their own concerns

[33] *Report_Summary-Digital_Competition_Law.Pdf*, https://prsindia.org/files/policy/policy_committee_reports/Report_Summary-Digital_Competition_Law.pdf (last visited Aug. 30, 2025).

[34] *Digital Markets Act*, (Aug. 27, 2025), https://digital-markets-act.ec.europa.eu/index_en.

regarding the same wherein they argued that the compliance mechanisms according to the Bill would become a burden and hinderance in the growth on new emerging businesses and start-ups, thereby choking competition instead of fostering it. Furthermore, it was pointed out that the criteria for identifying SSDE's were very vague, ambiguous and also arbitrary because it relied on turnover and number of users instead of including establishing a necessary nexus with market dominance. Critics have also pointed out India has a unique digital ecosystem and such ecosystem must require a more investigated and researched framework instead of having a copy-paste framework from the European Union.[35]

The withdrawal of the Bill does not signal the end of ambitions of the country to strengthen and formulate a framework that is up-to-date with the digital market. Rather, it is an opportunity to change the approach towards the same. If the framework is worked upon again, it could strike a balance between the controlling the unchecked market power of digital gatekeepers and also ensure that a regulation does not create any hurdles to innovation and invention. By adopting an approach that is executed in phases, wherein ex-post enforcement mechanisms continue to function and operate while the es-ante obligations are also introduced, slowly and steadily, in those sectors where possibility of market failure can be foreseen. Moreover, marking of SSDE's should not be solely based on size but also on indications of market powers that can be shown.

Therefore, the Draft Digital Competition Bill, 2023 reflected India's recognition of the challenges that were put forth by the Big Tech companies in the digital markets and the failure of it lies in its reliance on the European Union regulations, along with other shortcomings.

9.3 Comparative Insights

India has lessons to learn from the multiple global regulatory approaches and framework. India must consider reforming its existing competition law framework in the current digital age. European Union's Digital Markets Act (DMA),[36] is one of the most influential models around the entire globe. It came into force in the year 2022. This act is a departure from the conventional competition law regulations as it introduced something India rejected, ex-ante regulatory framework. This new framework specifically targets the gatekeeper platform which

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[35] Pankhudi Khandenwal, *Tying, Self-Preferencing and the Digital Competition Bill: A Changing Landscape for Competition Intervention?*, 19 INDIAN JOURNAL OF LAW AND TECHNOLOGY (2025), https://repository.nls.ac.in/ijlt/vol19/iss2/3.

[36] *Digital Markets Act*, (Aug. 27, 2025), https://digital-markets-act.ec.europa.eu/index_en.

are big digital enterprises that, with the help of their size and control over vital platform services, have the capabilities of destroying the market outcomes. This Act imposed various obligations, that were proactive in nature, like, system integration and compatibility with third party services, and restricting the use of non-public business data in order to put rivals in a disadvantageous position. An important point to note is that this Act focuses more on the creation of structural rules and regulations that govern platform behaviour well in advance in order to prevent the investigations of abuse of dominant powers.

In complete contras, the approach of the United States of America has recently shown a new assertive behaviour under the leadership of the Federal Trade Commission (FTC) and the Department of Justice (DOJ),[37] wherein, the FTC has initiated some high-profile lawsuits against the big names, like Meta[38] and Amazon,[39] while alleging unlawful monopolization in the social networking space and challenging the practices of exclusions which result in the putting independent sellers at a disadvantageous position. In a similar manner, DOJ's ongoing litigation with Google looks forward to structural remedies in order to address that dominance practice by it in online search and digital advertising markets. Unlike the ex-ante framework of the European Union, the U.S. enforcement mainly and broadly works on ex-post, while relying on remedies that are judicially run, catering specific cases only.

For India, these different models highlight opportunities as well as a cautionary lesson. The ex-ante framework underscores the importance of a timely intervention so that market tipping in favour of dominant players and this is a prominent and vital concern for the Indian Digital economy and market. Therefore, a hybrid approach maybe best suited for India's unique market conditions because such a model would ultimately allow regulators to constrain the digital gatekeepers without imposing any burden of compliances on small enterprises and start-ups.

10. CASE STUDY: AMAZON, FLIPKART AND MYNTRA

10.1. What Preferential Treatment looks like in the marketplace

On multi-seller marketplaces, preferential treatment refers to practices that move discovery, costs or access towards a small section of advantaged sellers, often linked by contract, capital

[37] Amy Marshak, *THE FEDERAL TRADE COMMISSION ON THE FRONTIER: SUGGESTIONS FOR THE USE OF SECTION 5*.
[38] Federal Trade Commission v. Facebook, Inc., No. 1:20-cv-03590 (JEB) (D.D.C. Jan. 13, 2021).
[39] Federal Trade Commission v. Amazon.com, Inc., No. 2:23-cv-01495-JHC (W.D. Wash. Nov. 2, 2023).

or operational ties to the platform. In India, the Competition Commission of India conducted a market study on E-commerce, noting concerns around search ranking opacity, differential fees, warehousing and extensive launches that can foreclose rivals and reduce effective choice for consumers.[40] This brings up the importance of platform neutrality around search and discount mechanisms.

10.2. Amazon & Flipkart: Antitrust Findings on Bias

Through extensive reports on Amazon and Flipkart created in 2024, two CCI investigators examined the nature of preferential treatment and platform bias.[41] It was observed that both the companies had formed an environment so detrimental that preferred sellers appeared higher in search results, taking out other competitors in the process.

Concretely, from the CCI's investigation into Amazon and Flipkart, four dominant bias mechanisms can be observed:

1. **Search/Placement Bias:** The CCI's 1,027- and 1,696-page reports on Amazon and Flipkart respectively examined that preferred sellers repeatedly occupied top search slots and prominent placements, turning other sellers into mere database entries.[42] Essentially, the platforms favoured select sellers and prioritised certain listings, particularly in smartphones, harming rivals. This is a classic example of ranking bias, wherein a platform's relevance algorithm systematically lifts a chosen cohort.

2. **Cost-structure bias:** The CCI described preferential access to fulfilment, warehousing and marketing at minimal cost for those sellers- an advantage that compresses their effective marginal costs versus unaffiliated sellers. Such support, including paid visibility and faster shipping badges, feeds back into higher conversion and rating dynamics, deepening the ranking edge.[43]

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[40] XYZ(Confiedential) vs CCI, Competition Commission of India, Government of India, 1 (2022).

[41] Exclusive: Amazon, Walmart's Flipkart Breached India Antitrust Laws, Investigation Finds | Reuters, https://www.reuters.com/world/india/india-probe-finds-amazon-walmarts-flipkart-breached-antitrust-laws-2024-09-12/

[42] Mayank Udhwani, 'Remedying The Mischief Created By E-Commerce Entities In India', (2020), 43, World Competition, Issue 3, pp. 385-414, https://kluwerlawonline.com/journalarticle/World+Competition/43.3/WOCO2020020

[43] Supra 4

3. **Exclusive-launch bias:** The reports also flagged exclusive product launches with smartphone brands (model debuts restricted to one platform or seller), which limit rival access when there is peak demand. Additionally, several manufacturers worked together to develop online-exclusive products, which strengthened the platform's preferred-seller flywheel. This is what creates access bias, which refers to controlling the crucial time window when consumer attention is most flexible.[44]

4. **Discount-orchestration bias:** It was observed that steep or below-cost discounting was concentrated on preferred suppliers during large-scale events like the Great Indian Festival. Small sellers and offline merchants are unable to match headline prices underwritten by platform funding or indirect subsidies, which results in a price-signal bias that shifts the market share in favour of the privileged set.[45]

10.3. Feedback Loop of Reinforcing Bias

Each bias mechanism is harmful in itself. However, the real harm takes place in their cumulative and cyclical interaction. For instance, Discovery bias through search uplifts ensures that favoured sellers are consistently more visible. High visibility translates directly into disproportionate consumer traffic and sales. With more sales, these sellers become indispensable to the platform. This allows them to negotiate further benefits like additional marketing, better fee terms and other exclusives. Cost-structure biases like lower fees and warehousing strengthens the ability of these companies to undercut rivals. Exclusive deals draw more shoppers to them, and discounts cement their dominance.[46]

Thus, the result is a feedback loop wherein more prominence, leads to more sales, which allows these companies to gain more leverage and thus inevitably capture more prominence. [47]

This analysis shows that preferential treatment is not a one-off deviation but a systemic market design problem.[48] Each bias feeds the next, creating a self-reinforcing ecosystem that

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[44] Gergely Csurgai-Horváth, 'Regulating Algorithmic Bias as a Key Element of Digital Market Regulation', (2024), 47, World Competition, Issue 2, pp. 193-212, https://kluwerlawonline.com/journalarticle/World+Competition/47.1/WOCO2024015

[45] Sean Durkin, The Competitive Effects of Loyalty Discounts in a Model of Competition Implied by the Discount Attribution Test, 81 ANTITRUST L.J. 475 (2017).

[46] Daniel A. Hanley, Per Se Illegality of Exclusive Deals and Tyings as Fair Competition, 37 BERKELEY TECH. L.J. 1057 (2022).

[47] Lianos, I. (2020). Competition Law as a Form of Social Regulation. The Antitrust Bulletin, 65(1), 3-86. https://doi.org/10.1177/0003603X19898626

[48] Rahbari, E. and Masoudi Tafreshi, A. (2024). Self-Preferencing in Digital Platforms: A Competition Law

advantages a small inner circle of sellers while relegating the broader seller base to irrelevance. This amounts to foreclosure of market access and denial of platform neutrality, which erodes the promise of open marketplaces.

10.4. Myntra: Preferential Routing through FDI Structures

In July 2025, the Enforcement Directorate registered a FEMA complaint alleging Flipkart-owned Myntra, while claiming to operate as a wholesale business, was sending all of its stock to a related retailer, which then sold directly to consumers.[49] According to the ED, this setup was just a way to hide multi-brand retail activity under the label of wholesale, violating India's FDI rules.[50]

10.5. Preferential routing provide structure control over supply

The core allegation is not merely that Myntra raised foreign capital, but that the firm's corporate structure and commercial routing allowed a related entity to become the de-facto retail arm for Myntra's inventory.[51] When an e-commerce platform or a group company controls inventory flows to a captive retail arm, it gives that arm a big advantage, meaning the related retailer gets better stock, more control over pricing, and greater product availability than independent sellers. In other words, the company is giving preferential treatment to its own arm on the supply side. The ED's complaint argues that Myntra's wholesale unit was mainly being used as a channel to run a multi-brand retail business.[52]

10.6. Preferential routing produces the same market effects identified by CCI in the Amazon/Flipkart case

Even though the legal issue is framed under FEMA and FDI rules, the real economic impact looks similar to what the CCI flagged in the Amazon & Flipkart cases. By sending supply mainly to an affiliated retailer, the platform creates access bias (the affiliate gets first pick of

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Analysis of Preferential Treatment and the Requirements for Ex-Ante Regulations. Private Law, 21(1), 91-107. doi: 10.22059/jolt.2024.373201.1007284

[49] India Accuses Walmart's Myntra of Breaching Foreign Investment Rules | Reuters, https://www.reuters.com/world/india/india-accuses-walmarts-myntra-breaching-foreign-investment-rules-2025-07-23/

[50] Supra 12

[51] *ED Files FEMA Case against Myntra, Linked Firms for Rs 1,654 Cr Violation*, THE ECONOMIC TIMES, July 23, 2025, https://economictimes.indiatimes.com/industry/services/retail/myntra-faces-ed-probe-over-rs-1654-cr-foreign-exchange-violation/articleshow/122855111.cms?from=mdr.

[52] Supra 12

popular products), cost-structure bias (it benefits from cheaper logistics and marketing), and price-signal bias (it can run coordinated discounts). What seems like a technical FDI violation actually turns into a bigger competition problem, where the company's structure is used to tilt visibility, product availability and pricing in favour of its own sellers.

10.7. This undermines the marketplace neutrality and arms-length transactions

As per the marketplace rules codified in Press Note 2/2018[53] and related FDI guidance, marketplaces are required to be neutral facilitators, not inventory controllers or price-controlling sellers.[54] Routing inventory to a group retail arm collapses the distinction between marketplace and inventory-led retail, therefore defeating the intent of the FDI rules and creating preferential commercial relationships that distort competition on the platform. These rules also mention that sale to group companies should be limited and that the marketplace should not influence the price. Channelling consumer sales through a related retailer goes against the purpose of these rules, and according to the ED, outright breaks them.

10.8. Implications

1. **Competitive foreclosure and injury to SMEs**: Preferential routing limits prospects for independent sellers such as SMEs and kirana-affiliated vendors who are not able to duplicate the same inventory access or internal discounts, and thus reduces genuine supply competition.[55]

2. **Trade-offs for consumer welfare:** Offers short term benefits to consumers, which include cheaper pricing, but it may have long term negative effects, such as lesser entrants, less diversity among sellers, less innovation in seller methods and higher post consolidation prices.[56]

Myntra's behaviour is not a small statutory error, but a design decision that mirrors the preferential mechanisms that CCI found detrimental in Amazon and Flipkart. This includes supply control, preferred access and uneven pricing capability. The ruling and complaint imply

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[53] Press Note 2/2018

[54] Aakash A. Kamble & Shubhangi Walvekar, Policy Regulations in E-Commerce Sector – Critical Analysis of FDI Guidelines for Market Place Model, 8 JOURNAL OF COMMERCE AND MANAGEMENT THOUGHT 409 (2017).

[55] Kampel, K. (2004). Competition law and SMEs: Exploring the competitor/competition debate in a developing democracy.

[56] Werden, G. J. (2011). Consumer welfare and competition policy. In Competition policy and the economic approach. Edward Elgar Publishing.

that competition authorities have the power to consider the commercial effects to be anti-competitive behaviour. Therefore, to keep the corporate structure from turning into an investment of market bias, authorities should align the investment compliances with competition remedies.

CONCLUSION AND SUGGESTIONS

It is seen that while the Competition Act, 2002, provides a good framework to curb anti-competitive practices, its application to digital platforms has revealed several gaps. The CCI's investigation into issues like preferential treatment and biases show that traditional antitrust tools can struggle with the complexities of these multi-faceted markets. E-commerce giants have used deep discounting and algorithm-driven biases to take control of the market, often at the expense of smaller sellers.[57] While consumers could benefit in the short term through lower prices and convenience, it is important to remember that the long-term risk is the potential consequences of reduced choice, eventual price increases and unfair competition.

India's Competition law regime has evolved considerably since the MRTP era, but in the digital economy its enforcement has been case specific. The CCI has rightly examined the challenges posed by these platforms, but its reliance on the conventional concepts of dominance and cost pricing limits its effectiveness.[58] Furthermore, the overlap with FDI policies often creates a lack of consistency in law enforcement. Compared to the EU's Digital Markets Act or the US' FTC Act, India still lacks clear ex-ante obligations for online markets.[59] In 2023, an ex-ante framework was built in the form of a draft Digital Competition Bill. The success of this will depend on the clarity of scope, institutional capacity and stakeholder trust.[60]

RECOMMENDATIONS FOR BETTER E-COMMERCE REGULATIONS INCLUDE:

1. **Ex-Post Rules, with full potential:**

   Indian legislators have already faced backlash with respect to the ex-ante rules which

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[57] Kampel, K. (2004). Competition law and SMEs: Exploring the competitor/competition debate in a developing democracy.
[58] Jain, Sumit and Singh, Vikrant, Competition in Digital Markets: An Indian Perspective (June 12, 2024). Available at SSRN: https://ssrn.com/abstract=4863926 or http://dx.doi.org/10.2139/ssrn.4863926
[59] Das, S. (2024). Ex-Ante Regulation: An Evolving Need in Digital Markets. Competition Commission of India Journal on Competition Law and Policy, 5(1), 55–77. https://doi.org/10.54425/ccijoclp.v5.182
[60] India Briefing, India's Digital Competition Bill Advances with Industry Insights, INDIA BRIEFING NEWS (Mar. 17, 2025), https://www.india-briefing.com/news/indias-digital-competition-bill-advances-with-industry-insights-36536.html/.

resulted in the withdrawal of the Digital Competition Bill, 2023 in August of 2025. Introducing ex-ante rules again even with amendments and changes would not be fair to the current scenario that already exists. We have the ex-post rules in force as of now. But we have not tapped the full potential of it yet. With the Competition Commission of India not being able to enforce their penalties in full force and with much of resources and posts being vacant, India's framework and the Commission is yet to finish its task for the ex-post tenure. India's market is in a volatile stage and is not in a position to accept ex-ante rules yet. And therefore, it is recommended for India to work on its structure and improve the existing framework as the framework has a lot of points and areas to improve on.

2. Dominance in Digital Markets

Usually, in Indian law, market share calculation has been of importance while approaching dominance cases. While this works in traditional areas, it is not necessarily good for digital platforms, where competitive advantage often steps from network differences, economics of scale in data and general ecosystem lock-ins (situations where consumers are increasingly reliant on specific company products or services). Even if Amazon or Flipkart do not dominate the market in terms of shares, they are superior in terms of being able to collect consumer data, dictate terms and bring multiple services under them to influence the market. Thus, dominance must be redefined in the e-commerce landscape and must include qualitative factors that could range from consumer attention to dependence on third-party sellers. If these factors can be taken into account while reviewing any abuse of dominance, it will be easier to understand the harms of the digital market and tackle any anti-competitive practices.

3. Transparency in Algorithms

Algorithms that are used in these areas include those that decide search rankings, recommendations and product visibility. Sellers on Amazon and Flipkart know very little about how algorithmic choices impact their customer outreach. Thus, increased transparency would be a crucial area of improvement. The issue of a non-transparent system is evident through the numerous cases of self-preferencing, where platforms are biased towards their own private goods or preferred vendors. Customers may be directed towards products based on the platform's commercial interest and not merit, which not only affects consumer choice but also hurts smaller firms who just want to spread their business. Thus, enforcing disclosures of primary factors influencing ranking and recommendation algorithms, as well as frequent audits would help improve accountability while also keeping trade secrets hidden. These measures would not only improve trust in online markets and keep India's framework in line with international law, but also close the gap between online platforms and small sellers.