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## **INDIA'S DIGITAL MARKET REGULATION: A HYBRID MODEL OF THE US AND EU IS THE WAY FORWARD?**

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India's market is growing at a tremendous speed, from application based market places and digital payments to online advertising and e-commerce ecosystems, a group of large technological companies exercises control over how businesses reach consumers and how consumers access markets. Though the growth has shown innovation, has lowered cost of transactions and also expanded consumer access but to the other side it has also concentrated economic power in the hands of large tech companies which is not adequately addressed through existing competition law and struggles to control.

The regulations interpretation is not theoretical anymore, policymakers are grappling with how the competition law should work when market is built not through price control anymore but through data accumulation, network effects and integration of platform ecosystems within the country. India faces this problem at a critical juncture.

While the Competition Commission of India (CCI), has taken necessary steps to investigate digital market practices, but enforcement of the same delays and fast growing business models show the limitations of solely relying on the traditional antitrust tools.

Under the Competition Act, 2002 , anti-competitive agreements are supervised under Section 3, abuse of dominance under Section 4, and combinations ( mergers and acquisitions) under Sections 5 and 6. Although these provisions remain applicable to digital markets, they were drafted during the traditional economics markets.

Globally, regulators have taken different approaches. The European Union (EU) has welcomed an Ex-Ante regulation through the Digital Markets Act, 2022 (DMA), while the United States (US) has intensified litigation-based enforcement, which is rooted in their structural antitrust principles. India now, shows that it stands in between these two models. Rather than replicating either approach, India should work towards a hybrid model framework that combines important specific regulations of Ex-ante with strong ex post enforcement method, with keeping in mind the possibility of structural remedies suited to Indian Market realities.

## **Digital Platforms and Setbacks of Traditional Anti-Trust Law.**

Traditional competition law was developed during the era of economic environment where market was mainly assessed through change in price, output and any exclusionary conduct. Digital markets, however operate through different dynamics that traditional frameworks struggle to assess.

One of the most significant features of digital markets is the presence of strong network effects, as the value of a platform increases as more users join it, leads to active participation by both consumers and businesses. Over time, this dynamic helps already established firms to strengthen their position and makes it harder for the newcomers or other competitors to grow in the market, and most important role here plays is data, as a competitive asset, as large technological companies collect huge amounts of user data and later use them to refine algorithms, personalise services and optimise digital advertising systems. These advantages might not be seen in conventional market share but significantly shapes competitive outcomes.

Digital ecosystems further complicate antitrust enforcement as many platforms operate interconnected services such as their operating systems, app stores, search engines, payment systems and other within the same technological environment. When integration becomes concentrated in hands of few companies, switching cost would be increased for platforms users, leading to locking them into particular ecosystems.

The Competition Commission of India has already encountered these challenges. In the Android Mobile Operating System Case (CCI 2022) the CCI found that Google abused its dominant position, the CCI found that google had abused its dominant position in the Android mobile operating system by imposing restrictive agreements on smartphones manufacturers which required that its proprietary applications should be pre-installed in the phone. The Commission saw that it limited market access for other competitors and their services, which violated Section 4 of the Competition Act, 2002.

Similarly, in In Re. Google Play Store Billing Policies (2022), the CCI examined Google's requirement that app developers were using its proprietary billing system for in app purchases. The Commission held that such conduct was unfair as it showed the Google's dominance over the app distribution ecosystem. These cases show how digital platforms can exercise market power through technological infrastructure rather than traditional pricing mechanism. However, complexities of digital market often make investigations lengthy and resource intensive, as it continues to grow rapidly and just reactive enforcement may not always prevent

long term domination.

### **The European Union's Preventive Regulatory Model.**

The European Union has taken one of the most proactive approaches toward regulating digital dominance. Even before introducing new legislation, the EU already pursued many landmark cases of antitrust against major technological firms. It shows they were all set to curb this new form of digital market dominance .

In the Google Shopping Case (2017), the European Commission imposed a €2.42 billion fine as after finding that Google was unfairly prioritising its own shopping service in search results. The Commission held that such method of self- preferencing often distorted competition by disadvantaging rival service giving competitors. A year later, the Google Android Case (2018) resulted in €4.34 billion penalty after Commission found out that Google was imposing restrictions on smartphone manufacturers to maintain its dominance of its search engine.

Recognising that traditional enforcement often takes a lot of time to prevent market tipping, the European Union adopted the Digital Markets Act (DMA), 2022. which became fully applicable in March 2024. The DMA introduced ex-ante regulatory obligations for large digital companies designated herein as 'Gatekeepers'. These obligations restrict practices such as self preferencing, unfair conditions for users access, and also limit interoperability.

By establishing clear rules in advance, the DMA aims to prevent this anti-competitive behaviour in digital ecosystems before it occurs. However, while the EU model provides useful insights, its strict regulations might not be suitable frameworks for India as here in India, the digital market is rapidly growing and excessive regulations and obligations would hinder the pace of growth and innovation.

### **The United States' Litigation-Driven Approach**

Unlike the EU's regulatory model, the US has relied majorly upon traditional litigation-based antitrust enforcement. One of the most influential cases in digital competition law remains United States v. Microsoft Corp. (2001), where court concluded that Microsoft abused its monopoly power by restricting competition from rival web browsers.

More recently, U.S. regulators have started investigations and scrutiny of dominant technological firms. In United States v. Google LLC (2020), the Department of Justice alleged that Google maintained its dominance in the online search market through some exclusionary agreements which was about its search engine remained the default option on smartphones and

internet browsers. Since Microsoft, this case has been described as one of the most significant antitrust proceedings in the digital market ecosystems.

The U.S. approach emphasises detailed economic analysis and structural remedies through court proceedings. But, in India, relying primarily on ex-post facto enforcement is not feasible as judicial delays could significantly slow enforcement in a fast growing digital economy of our country.

### **Towards a Hybrid Framework for India**

India's digital economy differs substantially from both the American and European contexts. India currently has an enormous consumer base with one of the fastest growing technology startups ecosystem and also evolving regulatory institutions, which suggest that India should have a balanced approach toward regulatory framework.

Recent developments show that India is already moving towards the direction of evolving regulations for markets, as in 2024, the Ministry of Corporate Affairs released the Report of the Committee on Digital Competition Law (CDCL), which examined the challenges posed by the dominating digital platforms. The committee recommended the introduction of E.U. type ex-ante regulatory framework for Systemically Significant Digital Enterprises (SSDEs) in order to address practices such as self-preferencing and anti-steering conduct.

At the same time, India also modernised its competition law framework through the Competition (Amendment) Act, 2023, which introduced new merger control thresholds and strengthened the enforcement power of the CCI. These reforms are particularly relevant as in digital markets, large companies acquire startups with low turnover but have high strategic value, and they often go untouched by traditional merger scrutiny. A hybrid approach would therefore allow India to combine specific preventive obligations like E.U. with case by case enforcement under the act. Such framework would enable regulators to address anti-competitive practices early while holding the flexibility to investigate new forms of digital market conduct.

### **Conclusion**

The rapid expansion of digital platforms has changed the dynamics of modern economics competition, while traditional antitrust law remains significant but they must evolve to address the characteristics and dynamics of digital markets.

The European Union's preventive regulatory model and the U.S. litigation driven enforcement

represent two different ways of addressing the problem of growing digital market dominance. However, neither way alone can effectively address India's evolving digital economy.

A hybrid regulatory framework combining targeted ex-ante obligations with strong ex post enforcement offers the most practical path forward. By adapting its competition law regime to the evolving dynamics of digital markets, India can ensure that innovations continue to flourish while also addressing the problems of digital market structures for fair competition.