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## **REGULATING THE DIGITAL ECONOMY: CHALLENGES FOR CORPORATE AND COMPETITION LAW IN INDIA**

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### **ABSTRACT**

The digital economy has rapidly transformed India's economic landscape, creating unprecedented opportunities for growth, innovation, and consumer empowerment. Yet, this transformation has equally raised complex challenges for regulatory frameworks in corporate and competition law. Traditional doctrines of corporate governance, market dominance, and fair competition often fail to capture the peculiarities of digital platforms, network effects, and data-driven markets. This paper explores the legal challenges posed by the digital economy in India, focusing on the interface between corporate regulation, competition law, and emerging digital business models. Drawing upon statutory developments, case law, and global best practices, the paper argues for a reorientation of Indian corporate and competition law to better regulate digital markets, address anti-competitive conduct, and safeguard consumer interests while fostering innovation.

**Keywords:** Digital Economy, Corporate Law, Competition Law, India, Big Tech Regulation, Antitrust, Data Economy

## I. INTRODUCTION

The twenty-first century economy is increasingly digital. From e-commerce giants like Amazon and Flipkart to digital service providers such as Google and Meta, online platforms dominate consumer choice and corporate strategy alike. In India, digital markets contribute significantly to GDP, with estimates suggesting that the digital economy could account for \$1 trillion by 2030.<sup>1</sup> Yet, the legal frameworks governing corporate regulation and competition have not evolved at the same pace.

The Companies Act, 2013, Competition Act, 2002, and sector-specific regulations form the backbone of India's corporate and competition law regime. However, their applicability to digital markets—characterized by network effects, multi-sided platforms, algorithmic collusion, and data monopolies—raises critical issues. Traditional corporate law concerns such as transparency, shareholder protection, and governance intersect with broader competition law questions of abuse of dominance, predatory pricing, and mergers in digital ecosystems.

This article examines these challenges under four broad heads:

- i. Corporate law in the digital age
- ii. Competition law and the regulation of digital markets
- iii. Interplay of corporate and antitrust concerns in mergers and acquisitions
- iv. Regulatory reforms and the way forward.

## II. THE DIGITAL ECONOMY AND ITS LEGAL CONTEXT

### 1. Features of the Digital Economy

The digital economy in India is distinct in several respects: Platform-based models that connect multiple user groups (e.g., Uber, Zomato). Network effects, where value increases as more users join. Data as a resource, often termed “the new oil,” central to consumer targeting and algorithmic pricing.<sup>2</sup> Zero-price markets, where services appear “free” but are monetized

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<sup>1</sup> NITI Aayog, *India's Trillion Dollar Digital Opportunity* (2020).

<sup>2</sup> Shoshana Zuboff, *The Age of Surveillance Capitalism* (2019).

through data extraction and advertising.

## **2. Need for Legal Adaptation**

While these features drive innovation, they also create regulatory blind spots. Traditional antitrust analysis based on price competition does not easily apply to digital services. Corporate law too faces hurdles in ensuring transparency in algorithmic decision-making and accountability in multinational platform governance.

### **III. CORPORATE LAW CHALLENGES IN THE DIGITAL AGE**

#### **1. Corporate Governance in Digital Enterprises**

Digital corporations often operate through complex ownership structures and offshore subsidiaries. Ensuring compliance with the Companies Act, 2013 regarding disclosures, beneficial ownership, and board accountability becomes more difficult in such globalized corporate setups. The role of independent directors in monitoring digital corporations is especially relevant given conflicts of interest in related-party transactions and investor rights in technology start-ups.<sup>3</sup>

#### **2. Transparency and Disclosure**

Digital firms rely heavily on intellectual property, algorithms, and data analytics. Unlike traditional corporations, their most valuable assets are intangible and often outside the scope of conventional disclosure norms. The Securities and Exchange Board of India (SEBI) has struggled to evolve guidelines for IPO disclosures of start-ups where profitability is uncertain but valuations are driven by future growth potential.<sup>4</sup>

#### **3. Corporate Social Responsibility (CSR) and Digital Economy**

Under Section 135 of the Companies Act, CSR obligations apply equally to digital corporations. However, compliance remains minimal, raising questions about digital inclusion

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<sup>3</sup> Umakanth Varottil, "Corporate Governance in Start-ups: India's Challenges," NLS Business Law Review (2018).

<sup>4</sup> SEBI, Consultation Paper on IPOs of Loss-making Companies (2021).

and whether CSR funds should be directed towards bridging India's digital divide.<sup>5</sup>

## **IV. COMPETITION LAW CHALLENGES IN THE DIGITAL ECONOMY**

### **1. Defining Market Power in Digital Markets**

The Competition Commission of India (CCI) has faced challenges in defining "relevant market" for digital firms. In *Google Inc. v. CCI*, the Delhi High Court emphasized the need for nuanced market definitions where services are interlinked and cross-subsidized.<sup>6</sup> In the Uber–Ola cases, predatory pricing complaints revealed the difficulty of applying Section 4 (abuse of dominance) in markets where low prices are sustained by venture capital funding rather than efficiency gains.<sup>7</sup>

### **2. Abuse of Dominance**

Digital platforms engage in practices such as: Self-preferencing (Amazon promoting its own brands). Exclusionary contracts (Google's Android agreements). Data monopolization through exclusive agreements. In *In re: Matrimony.com v. Google*, the CCI imposed a fine of ₹136 crore on Google for unfair search bias, underscoring the risks of self-preferencing in digital markets.<sup>8</sup>

### **3. Mergers and Acquisitions in Digital Markets**

Traditional merger control thresholds based on assets and turnover under the Competition Act often miss digital acquisitions where valuations are based on user base and data rather than revenue. This "killer acquisition" problem was evident in Facebook's acquisition of WhatsApp, which escaped scrutiny due to low turnover at the time despite massive competitive implications.<sup>9</sup>

### **4. Algorithmic Collusion and Pricing**

Algorithms enable tacit collusion without human intervention. The current Competition Act does not explicitly address algorithmic collusion, creating enforcement difficulties.

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<sup>5</sup> Ministry of Corporate Affairs, Annual Report on CSR (2022).

<sup>6</sup> *Google Inc. v. Competition Commission of India*, 2019 SCC Online Del 11154.

<sup>7</sup> *Meru Travel Solutions v. Ola Cabs*, CCI Case No. 25/2015.

<sup>8</sup> *Matrimony.com v. Google*, 2018 Comp LR 1 (CCI).

<sup>9</sup> OECD, *Competition in Digital Markets* (2020).

Comparative jurisprudence in the EU and US highlights the need for India to update its enforcement toolkit.<sup>10</sup>

## V. INTERPLAY OF CORPORATE AND COMPETITION LAW IN DIGITAL REGULATION

Corporate and competition laws intersect in the regulation of digital corporations, particularly in mergers, governance, and disclosure norms. Key overlaps include:

**Disclosure in M&A:** Corporate law requires transparency in mergers; competition law ensures such mergers do not harm market competition.

**Director Duties:** Board decisions to pursue anti-competitive practices may attract liability under both company law (for breach of fiduciary duties) and competition law.

**Global Structures:** Indian subsidiaries of global tech companies often argue that anti-competitive conduct originates abroad. Corporate law's extraterritorial provisions (Section 234 of Companies Act) may thus complement competition law enforcement.

## VI. COMPARATIVE PERSPECTIVES

### 1. European Union

The EU's Digital Markets Act (DMA) directly regulates "gatekeeper" platforms, prohibiting selfpreferencing and mandating interoperability. The EU's experience provides a template for ex ante regulation in India beyond ex post antitrust enforcement.<sup>11</sup>

### 2. United States

US antitrust enforcement against Big Tech has intensified, with actions against Google, Apple, and Meta focusing on exclusionary practices. However, the consumer welfare standard in US antitrust remains a limiting factor.<sup>12</sup>

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<sup>10</sup> Ariel Ezrachi & Maurice Stucke, *Virtual Competition* (2016).

<sup>11</sup> European Union, *Digital Markets Act* (2022).

<sup>12</sup> Lina Khan, "Amazon's Antitrust Paradox," *Yale Law Journal* (2017)

### 3. Lessons for India

India may adopt a hybrid approach, combining ex post enforcement by CCI with ex ante rules for digital gatekeepers, as suggested by the Parliamentary Standing Committee on Finance (2022).<sup>13</sup>

## VII. INDIAN LEGISLATIVE AND POLICY DEVELOPMENTS

Competition (Amendment) Act, 2023 introduced the concept of deal value thresholds for merger control, enabling scrutiny of high-value digital acquisitions.<sup>14</sup> The Digital Personal Data Protection Act, 2023 intersects with competition law in regulating data monopolies. SEBI's evolving regulations on start-up IPOs reflect attempts to align corporate disclosures with the realities of digital firms.

## VIII. CHALLENGES AND THE WAY FORWARD

**Regulatory Capacity:** The CCI requires greater expertise in data analytics, digital economics, and algorithmic assessment.

**Overlap of Laws:** Coordination is needed between the CCI, SEBI, RBI, and data protection authority.

**Ex Ante Rules:** India may consider a framework akin to the EU's DMA for systemic digital intermediaries.

**Global Cooperation:** As digital corporations operate across borders, India must engage in international cooperation on digital competition issues.

**Balancing Innovation and Regulation:** Excessive regulation may stifle start-ups; a calibrated approach is essential.

## IX. CONCLUSION

The digital economy presents both opportunities and challenges for India's corporate and competition law regime. While existing statutes like the Companies Act and Competition Act

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<sup>13</sup> Parliamentary Standing Committee on Finance, Report on Anti-Competitive Practices by Big Tech (2022).

<sup>14</sup> The Competition (Amendment) Act, 2023

provide a framework, their application to platform economies, data-driven models, and algorithmic practices remains fraught with difficulty. Learning from global approaches while tailoring reforms to India's unique digital ecosystem is essential. A future-ready regulatory framework must ensure transparency, accountability, and fair competition, thereby foster innovation while protecting consumer welfare.