REASSESSING COMPETITION LAW ENFORCEMENT IN THE DIGITAL ECONOMY

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ABSTRACT

The way competition plays out in contemporary markets has been drastically changed by the digital economy's explosive growth. Digital platforms, in contrast to traditional industries, thrive on network effects, scalability, and massive data accumulation, giving a small number of tech companies unprecedented market power. This paper examines the relationship between competition law and digital market regulation, emphasising how established legal frameworks often fail to address the complexity of data-driven dominance, algorithmic control, and cross-market leveraging. It examines significant international precedents from a range of legal systems. The paper explores how new regulatory models must strike a balance between innovation and consumer welfare with accountability and transparency, going beyond analysing particular enforcement cases. It contends that ex-post mechanisms alone are inadequate to address digital monopolies that can solidify their position through rapid user acquisition and data integration. To guarantee open markets, safeguard consumer choice, and advance technological justice, a forward-thinking, ex ante strategy that supplements traditional competition law is crucial. In the end, the study emphasises the necessity of a more flexible and dynamic legal framework to protect competition in a world economy that is becoming more and more digitalised.

Introduction

The term "digital economy" describes economic activity that is mainly enabled by digital technologies, such as artificial intelligence, data analytics, digital platforms, and the internet. The digital economy is centred on intangible assets like data, code, software, and algorithms, in contrast to traditional industries that mainly rely on tangible goods and infrastructure. New business models have emerged as a result of this change, such as multi-sided platforms like Facebook, Uber, and Amazon that link consumers with advertisers and service providers in intricate networks. By utilising data gathered from user interactions to optimise services and target users, these platforms extract value.

The competition debate is still being fuelled by technological advancements, whether they are related to platforms, app stores, cloud computing, or artificial intelligence ("AI"), as well as associated data and privacy concerns. Competition authorities are concerned about the competitive dynamics and behaviour of businesses operating in the digital economy. Competition authorities have occasionally stepped in to protect innovation and competition, which they believe could be hindered by companies with market dominance. In addition to numerous legislative and policy changes in the area of competition, this has led to an increase in the number of market studies, merger reviews, and antitrust enforcement cases.[1]

The overlap between competition law and the digital economy brings a whole new set of challenges. Old competition rules were built for markets dealing with physical goods and clear borders, but not for today's digital spaces powered by data, algorithms, and platforms that can scale almost instantly. Power in these markets often hides behind the codes. It can be through control over data, the ability to act as a gatekeeper, or subtle algorithmic coordination. These are the reasons why regulators around the world are rethinking how to keep these markets open and fair.[2] This assignment looks into the various challenges in the digital economy in contrast to the competition enforcement. It also looks into how various jurisdictions in the world have moulded their legislation to cope with the changing trends in the digital economy and the challenges faced by the competition, Law for enforcement in the Digital economy.

[1] CC Task Force on Competition Law and the Digital Economy, Global Report on Antitrust Enforcement in the Digital Economy (Int'l Chamber of Com. Sept. 2023).
[2] European Commission, Shaping Europe's Digital Future (2020).

Digital Platform Dominance

The dominance of digital platforms was not unintentional; instead, it was the result of technological and economic factors that inherently favour speed, scale, and control. Digital platforms thrive on scalability, instant distribution, and network effects, in contrast to traditional businesses that grow slowly through physical expansion. With almost no additional expense, their products can reach millions of people, and each new user increases the platform's value for subsequent users. This eventually produces a strong growth cycle that is challenging for newcomers to escape.[3] Dominance reinforces itself in this ecosystem when you combine it with the high volumes of data that these platforms gather, which are used to target advertisements, improve algorithms, and forecast behaviour. Replicability, network effects, user lock-in, scalability, low marginal costs, and the strategic use of data.

What led to the Digital Market Dominance?

Scalability and low marginal costs give platforms a head start. Once a platform's infrastructure (servers, software, algorithms) is built, serving extra users almost costs nothing. This means costs don't grow linearly with the number of users, so big platforms can spread their costs widely, undercut newcomers to the market, and reinvest heavily. Research shows that these economies of scale, together with network effects, contribute heavily to market concentration.[4]

One of the strongest forces behind digital platform dominance is the network effect. In simple terms, the more people who use a platform, the more valuable it becomes for everyone else. This works in two ways. First, through direct network effects, where users benefit from simply having more people on the same platform, for example, think of Facebook or WhatsApp, where the platform's usefulness depends on how many of your friends are there. Second, through indirect network effects, a growing user base attracts other groups like advertisers, app developers, or sellers, which in turn makes the platform even more attractive to users. Over time, this creates a feedback loop: more users bring more value, and that value draws in even more users. Such feedback loops make digital markets prone to "tipping," where one platform

[3] International Competition Network, *Topics on Assessment of Dominance in Digital Markets* (Unilateral Conduct Working Group, Apr. 2024), https://www.internationalcompetitionnetwork.org/wp-content/uploads/2024/04/UCWG-Topics-on-Assessment-of-Dominance-in-Digital-Markets.pdf.
[4] Qian Li & Caroline Cauffman, Abuse of Relative Dominance by Digital Platforms: A Law and Economics Perspective, 74 GRUR Int'l 217 (2025).

becomes dominant, and competitors struggle to gain traction.[5]

User lock-in and related high switching costs are another important consideration. People become deeply ingrained in a platform's ecosystem once they begin using it, whether it be for photo uploading, data storage, contact list building, or personalisation. All of that accrued value would be lost if you left. As a result, even in the case of better alternatives, users are deterred from switching due to a psychological and practical dependency. Researchers refer to this as a structural and cognitive lock-in, where users become trapped not only by data and technical barriers but also by convenience and habit. A platform's market position is strengthened by this established user base, which also makes it more difficult for new competitors to enter the market.[6]

The role of data is equally critical. Data is the fuel that drives the digital economy. Every click, search, and interaction gives platforms insights that help refine algorithms, improve recommendations, and target advertising more effectively. This creates a self-reinforcing cycle where more users mean more data, more data means better services, and better services attract even more users. Over time, the entities with the most data develop a competitive advantage that's almost impossible for smaller rivals to match. This data-driven feedback loop doesn't just increase efficiency, it can also increase dominance and make markets less contestable.[7]

Types of abuse of dominance cases in digital markets

Refusal to Deal

Refusals to deal encompass a wide range of potential competition concerns identified in digital markets. In essence, these concerns focus on access to an important input, technology or distribution network, without which it would not be possible to compete in a market. These are referred to as "essential facilities" where such an input can foreclose competition by denying rivals access to this resource.[8]

[5] *Ibid.*
[6] M. Hansen, From Attention Economy to Cognitive Lock-ins, Big Data & Soc'y (2024), https://journals.sagepub.com/doi/full/10.1177/20539517241275878.
[7] *Supra note 4*
[8] Organisation for Economic Co-operation and Development, *Licensing of IP Rights and Competition Law – Background Note by the Secretariat* (Directorate for Fin. & Enter. Affs., Competition Comm., June 6, 2019), DAF/COMP(2019)3.

A refusal to deal can be classified as either[9] :

- an unconditional refusal, in other words, a blanket refusal to supply in any situation;
- a conditional refusal, which is a refusal to supply unless the purchaser agrees to certain terms, such as exclusivity; or
- a constructive refusal, in which case the supplier agrees to a deal, but only under terms that make it difficult for the purchaser to compete. For example, in digital markets, this could include degrading the conditions for access to the input or failing to provide sufficient information to make use of the digital input in question.

The French Autorité de la concurrence's case involving Cegedim

In Decision No. 14-D-06 (8 July 2014), the French Autorité de la concurrence found that Cegedim SA had abused its dominant position in the market for medical information databases, which pharmaceutical laboratories use to manage patient appointments. Cegedim offered both its databases, including "OneKey", and its own customer relationship management (CRM) software. However, it refused to license "OneKey" to laboratories using a specific competing CRM, "NetReps," produced by Euris, while continuing to supply laboratories using other CRM software. Essentially, Cegedim singled out Euris users, claiming that its conduct was justified due to ongoing separate legal proceedings against Euris.

The Authority examined whether "OneKey" constituted an essential facility. It concluded that access was not indispensable, as competitors could technically reproduce the database and laboratories had alternative sources. While a fully equivalent database could not be recreated, the existence of alternatives meant that "OneKey" did not meet the legal standard for an essential facility.

Despite this, the Authority found that Cegedim had abused its dominance through discriminatory practices. By selectively denying access to Euris, Cegedim limited competition and hindered Euris' ability to remain in the market. As a result, the Authority imposed a fine of €5,767,000 and ordered corrective measures to address the discrimination. Cegedim appealed

[9] Organisation for Economic Co-operation and Development, *Competition Policy Roundtables: Refusals to Deal* (2007), http://www.oecd.org/daf/43644518.pdf.

to the Paris Court of Appeal and later the Commercial Chamber of the Court of Cassation, both of which upheld the Authorities' decision.[10]

Canadian Competition Bureau v. Toronto Real Estate Board (TREB) CT-2011-003

In May 2011, the Canadian Competition Bureau initiated an abuse of dominance case against the Toronto Real Estate Board (TREB) under section 79 of the Canadian Competition Act. The Bureau alleged that TREB had abused its dominant position in the residential real estate brokerage market in the Greater Toronto Area by imposing restrictions on access, use, and online disclosure of data from the Multiple Listing Service (MLS) Database, which TREB controlled and made available only to its members.

The MLS database contained current property listings and historical sales data, which were critical for agents facilitating real estate transactions. The Bureau emphasised that the database was "an essential tool for agents to help customers buy and sell homes," and that no readily available substitute existed for the full range of information and services the MLS provided. Alternative sources were considered complementary rather than substitutive.

TREB's rules restricted members from broadly sharing historical real estate sales data online while allowing some offline disclosure. The Bureau argued that these restrictions prevented innovative online services and substantially lessened competition by limiting the development of new tools, more detailed listings, and analytical services for consumers.

In April 2016, the Canadian Competition Tribunal agreed with the Bureau. The Tribunal noted that this was not an essential facilities case, but rather a case about TREB's discriminatory access practices that hindered innovation. The Tribunal ordered TREB to remove the restrictions.TREB appealed to the Federal Court of Appeal, which dismissed the appeal. TREB then sought leave to appeal to the Supreme Court of Canada, which was also dismissed on 23 August 2018.[11]

[10] Autorité de la concurrence, Décision No. 14-D-06 du 8 juillet 2014: Pratiques mises en œuvre par la société Cegedim dans le secteur des bases de données médicales (July 8, 2014), https://www.autoritedelaconcurrence.fr/en/decision/decision-14-d-06-8-july-2014-practices-implemented-company-cegedim-sector-medical.

[11] Competition Bureau Canada, Toronto Real Estate Board (TREB) – Abuse of Dominance Case (May 2011) https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03963.html accessed 5 October 2025.

The European Commission's case against Microsoft (COMP/C-3/37.792)

The case began with a complaint filed by Sun Microsystems in 1998, claiming that Microsoft refused to share interoperability information that would allow Sun's servers to communicate properly with Microsoft's Windows operating system. The European Commission later expanded the investigation in 2000 to include the tying of Windows Media Player (WMP) with the Windows 2000 operating system.[12]

The Commission identified two main issues:

1. Refusal to Supply Interoperability Information:

Microsoft argued that forcing it to disclose technical information would amount to a compulsory licence of its intellectual property rights. The Commission rejected this argument, stating that intellectual property protection cannot be used as a shield for anti-competitive conduct, especially in exceptional circumstances where refusal to share information restricts market competition. Sharing interoperability data was already an industry norm, which weakened Microsoft's justification. The Commission found this to be an abuse of dominant position under Article 102 TFEU.

2. Tying of Windows Media Player:

Microsoft bundled Windows Media Player with the Windows operating system, arguing that this benefited consumers since the player came pre-installed and was also available for free download. The Commission disagreed, holding that this tie-in gave Microsoft's product an unfair distribution advantage, making it harder for rival media players to compete. The practice reduced consumer choice and stifled innovation, which constituted a separate abuse under Article 102 TFEU.

The Commission ordered Microsoft to: Disclose complete interoperability documentation to competitors within 120 days and offer a version of Windows without Windows Media Player within 90 days. Microsoft was fined €497 million, a record penalty at that time. The General.

[12] European Commission, *Case COMP/C-3/37.792 – Microsoft* (Decision of Mar. 24, 2004), 2004 O.J. (L 32) 23.

Court of the European Union upheld the decision in 2007, confirming both the finding of abuse and the remedies imposed.[13]

Predatory Pricing

Predatory pricing refers to a foreclosure strategy by a dominant firm in which it sacrifices profits in the short term in order to drive its competitors from the market, at which point it will seek to recoup its losses with higher prices.[14]

Digital markets have some special characteristics that make predatory pricing harder to detect like, low marginal costs. Once a digital product (like an app or software) is built, selling it to extra users costs almost nothing. Free or freemium models, many platforms give users a free basic version and charge for premium features. A zero price doesn't always mean it is predatory in nature, it might be a legitimate strategy to grow users. Multisided platforms, platforms like Uber, Amazon, or YouTube, have multiple "sides" (drivers and riders, buyers and sellers, viewers and advertisers). Low prices on one side can actually increase value on the other side, so the low pricing could be pro-competitive. For example, Uber has two sides, drivers and riders, so if Uber wants more riders to use its app, it may offer very low fares and discounts to riders. More riders attract more drivers because drivers earn more when there are more passengers. So both sides benefit: riders get service at low cost, drivers get more business, and Uber gets more market share. As an alternative, alleged predatory pricing in multisided markets could be assessed in terms of whether it is profitable because it builds up a user base, or whether it is only profitable because it denies rivals scale.

Bottin Cartographes v Google France [2015] Paris Court of Appeal, Case No. 12/02931

In 2009, Bottin Cartographes filed a complaint against Google France, alleging that Google was abusing its dominant position in the market for digital mapping APIs by offering its services for free to eliminate competitors and later raise prices. In 2012, the Paris Tribunal de Commerce found that Google had foreclosed the market and ordered damages of EUR 500,000. However, this decision was reversed in November 2015 by the Paris Court of Appeal, following an opinion from the French Competition Authority. The Authority found that Google faced

[13] Pinar Akman, The European Commission's Case Against Microsoft: Reconsidering the Concept of Abuse under Article 82 EC, J. Bus. L. 255–84 (2009).
[14] Organisation for Economic Co-operation and Development, *Competition Policy Roundtables: Predatory Foreclosure* (2004), https://www.oecd.org/competition/abuse/34646189.pdf.

potential competition and that price-cost analysis did not support claims of predatory pricing. It further recognised that Google's offering of free API services was part of a broader "freemium model," where the free services were complemented by paid premium offerings and advertising revenue. The case highlighted the complexity of applying traditional predatory pricing frameworks to digital and multisided markets, demonstrating that evaluating only one side of the market, such as the free API, without considering revenue streams from other sides, could lead to incorrect conclusions about anti-competitive conduct.[15]

Margin Squeeze

A margin squeeze happens when a company that operates both upstream (producing or supplying a critical input) and downstream (selling the final product) uses its control to squeeze the profit margins of its competitors. In other words, the company sets prices or conditions so that rivals cannot make money, even if they are as efficient as the dominant firm[16].

No major digital market cases explicitly reference margin squeeze yet. However, the Google Shopping case by the European Commission touches on similar ideas.

Google was fined €2.42 billion by the European Commission in June 2017 for abusing its market dominance in general searches by favouring its own comparison shopping service. According to the Commission, Google engaged in self-preferencing when it promoted its own service above competing comparison shopping services in search results. This practice was perceived as using market dominance in general searches to obtain an unfair edge in a different market, comparison shopping, which resulted in a significant decline in traffic to rival websites and eliminated competition, thus limiting the options available to consumers. The case illustrates how a dominant firm can use control in one market to influence outcomes in a related market, raising complex questions for competition authorities in digital economies.[17]

Margin squeeze cases should carefully consider potential effects on investment incentives, and could be limited to cases in which clear consumer harm can be demonstrated. Authorities may

[15] Gabriele Accardo, *Paris Court of Appeal Overturns Google Abuse of Dominance Ruling* (TTLF News, Jan. 11, 2016), https://ttlfnews.wordpress.com/2016/01/11/paris-court-of-appeal-overturns-google-abuse-of-dominance-ruling.
[16] Organisation for Economic Co-operation and Development, *Competition Policy Roundtables: Margin Squeeze* (2009), http://www.oecd.org/regreform/sectors/46048803.pdf.
[17]European Commission, *Decision in Case AT.39740* (June 27, 2017), https://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf.

wish to focus on cases involving essential inputs and the exit of efficient competitors, although there may be cases in which a margin squeeze that does not meet these criteria can cause consumer harm.[18]

Exclusive dealing and loyalty discounts

Exclusive dealing and loyalty discounts are strategies used by dominant firms to secure a large share of a supplier's or customer's business. These arrangements can take the form of contracts that restrict suppliers from selling to competitors, or loyalty rebates that reward customers for purchasing most or all of their requirements from the dominant firm. While such strategies can sometimes improve efficiency, for instance, by preventing free riding or ensuring stable supply chains, they become problematic when they block competitors from entering or expanding in the market. In traditional industries, this might involve denying rivals access to key inputs. In digital markets, however, exclusivity can have deeper effects can prevent new firms from achieving the scale or network effects needed to compete.

In, European Commission and Qualcomm, Case AT. 40220,

The European Commission fined Qualcomm €997 million for abusing its dominant position in the market for LTE baseband chipsets, which are key components in mobile devices that enable 4G communication. The Commission first established Qualcomm's dominance by pointing to its very high market share, ownership of essential patents, access to critical technology licences, and the scale required to compete effectively in the chipset market. These factors created significant entry barriers, leaving potential competitors unable to pose a meaningful threat. The case centred on exclusivity payments made by Qualcomm to Apple. Under their agreement, Qualcomm would pay Apple substantial sums on the condition that Apple used Qualcomm's LTE chipsets exclusively in its iPhones and iPads. If Apple sourced even part of its chipsets from a rival supplier, the payments would stop. Evidence showed that Apple had considered switching to competitors like Intel, but was dissuaded by the risk of losing Qualcomm's financial incentives. Given Apple's size, accounting for roughly one-third of the market, the Commission found that this exclusivity arrangement effectively foreclosed rival chipset manufacturers from a major portion of demand. The Commission concluded that

[18] Organisation for Economic Co-operation and Development, *Abuse of Dominance in Digital Markets – Background Note by the Secretariat* (Directorate for Fin. & Enter. Affs., Competition Comm., Dec. 8, 2020), DAF/COMP/GF(2020)4.

Qualcomm's conduct harmed both competitors and consumers by limiting choice and stifling innovation in the chipset industry. Qualcomm argued that its payments did not prevent an "as-efficient competitor" from competing for Apple's business and provided a margin analysis to support its claim. However, the Commission rejected this defence, noting that the analysis excluded important factors such as research and development costs and overstated market contestability. Moreover, Qualcomm failed to show that the exclusivity payments generated any efficiency or consumer benefits capable of offsetting their anticompetitive effects. Accordingly, the European Commission held that Qualcomm's practices violated Article 102 of the Treaty on the Functioning of the European Union (TFEU) and imposed a fine of nearly one billion euros. The case is often cited as a key example of how exclusive dealing and loyalty rebates can amount to an abuse of dominance in digital and technology-driven markets.[19]

Tying and Bundling

Tying occurs when a company forces customers to purchase one product (the tied product) along with another (the tying product). Bundling involves selling two or more products together, sometimes with a discount or technical integration. These strategies are common in digital markets, where products are modular and interconnected, like hardware, software, and web services working together. These strategies are not inherently harmful; in fact, they can create efficiencies or improve user experiences. However, when a company with market power in one product uses it to limit competition in another, tying and bundling can distort competition and harm consumers.[20]

Digital markets create conditions that make tying and bundling especially appealing for large firms. Since digital goods can be reproduced at almost no extra cost, companies benefit from strong economies of scale as their user base grows. Network effects increase this advantage when more people use a service, its value naturally increases for everyone involved. This encourages firms to link their products and services together so that each one enhances the other. The cycle reinforces itself as more users attract more developers and advertisers, leading to better features and greater market power. On top of that, digital design makes bundling easy;

[19]European Commission, *Decision in Case AT.40220* (Jan. 24, 2018), https://ec.europa.eu/competition/antitrust/cases/dec_docs/40220/40220_2702_4.pdf.
[20] Organisation for Economic Co-operation and Development, *Abuse of Dominance in Digital Markets – Background Note by the Secretariat* (Directorate for Fin. & Enter. Affs., Competition Comm., Dec. 8, 2020), DAF/COMP/GF(2020)4

companies can pre-install apps, limit compatibility, or integrate one product within another, effectively strengthening their ecosystem and reducing opportunities for competitors.

US v. Microsoft 87 F. Supp. 2d 30 (D.D.C. 2000)

In October 1998, the US Department of Justice (DOJ) sued Microsoft for tying its Windows operating system to the Internet Explorer browser. The concern was that Microsoft was using its dominance in operating systems to limit competition from Netscape Navigator, which threatened the growth of alternative operating systems through Java's cross-platform capabilities. The District Court initially found Microsoft held monopoly power in operating systems and declared the tying unlawful, even proposing a breakup of the company. However, the Appeals Court rejected this approach, insisting on a "rule of reason" assessment that considered potential efficiencies and consumer benefits from the tie. The case ultimately settled in November 2001, requiring Microsoft to share its Application Programming Interfaces (APIs) with other companies.[21] Nothing in the settlement prevented the Microsoft Corporation from tying any of its software products to Windows in the future.

Microsoft Teams AT.40721 (EU Competition Commission)

In July 2023, the European Commission opened an investigation against Microsoft (Case AT.40721 – Microsoft Teams) to assess whether it breached EU competition rules by bundling its communication platform Teams with Office 365 and Microsoft 365. The case arose from complaints by Slack Technologies (2020) and alfaview GmbH (2024), which alleged that Microsoft abused its dominant position in the market for cloud-based collaboration software by restricting competition and interoperability.

The Commission's preliminary findings indicated that Microsoft held a dominant position in SaaS productivity software and, since April 2019, had tied Teams to its suites without offering customers a real choice to exclude it. This practice allegedly gave Teams an unjustified distribution advantage, distorting competition and hindering rival products' market access. Additionally, Microsoft's restrictions on interoperability limited the ability of competing communication tools to integrate with its applications, reinforcing barriers to entry within the European Economic Area (EEA).The Commission viewed these practices as a potential abuse

[21]European Commission, *Case AT.40220* (Jan. 24, 2018), https://ec.europa.eu/competition/antitrust/cases/dec_docs/40220/40220_2702_4.pdf.

of dominance under Article 102 TFEU, emphasizing that Microsoft's conduct reduced consumer choice and stifled innovation in the fast-growing market for cloud collaboration tools.[22]

After nearly two years of investigation and consultations with competitors and customers, Microsoft submitted a set of commitments to the European Commission to settle the case. In September 2025, the Commission accepted these final binding commitments, resolving the matter without a formal infringement finding. Under Article 9 of Regulation 1/2003, the commitments became legally binding and enforceable.Microsoft agreed to offer unbundled versions of its Office 365 and Microsoft 365 suites without Teams, at a reduced price, giving business customers a genuine choice. Existing customers under long-term contracts could also switch to these unbundled versions. The company further committed to improving interoperability by providing third-party developers with API and technical documentation to ensure their communication tools can integrate effectively with Microsoft's core applications. It also pledged to enhance data portability, enabling users to transfer Teams data to rival platforms easily.[23]

Compliance will be monitored by an independent trustee, with a fast-track dispute resolution mechanism in place and the potential for fines of up to 10% of Microsoft's global turnover in case of non-compliance. The Commission concluded that these measures adequately addressed its competition concerns and officially made them binding under EU antitrust law.[24]

Google LLC & Anr vs. Competition Commission of India & Ors., decided on March 29, 2023, Competition Appeal (AT) No. 01 of 2023.

Google, holding over 95% of India's smartphone OS market with Android, was found by the CCI to have abused its dominant position. Complaints alleged that Google forced manufacturers to pre-install its apps, use Google Search as the default, and blocked modified Android versions ("forks"), limiting competition and consumer choice. The CCI identified

[22] European Commission, Press Release IP/23/3886, Antitrust: Commission Opens Investigation into Possible Anticompetitive Practices Concerning Microsoft Teams (July 27, 2023), https://ec.europa.eu/commission/presscorner/detail/en/IP_23_3886.
[23] Microsoft Corp., *Microsoft's Commitments to the European Commission* (Partner Resources, last modified Sept. 15, 2025), https://partner.microsoft.com/en-ie/asset/collection/microsofts-commitments-to-the-european-commission-partner-resources.
[24] European Commission, Press Release IP/25/2048, Commission Simplifies Rules on Sustainability and EU Investments, Delivering Over €6 Billion in Administrative Relief (Feb. 26, 2025), https://ec.europa.eu/commission/presscorner/detail/en/ip_25_2048.

dominance in three markets: Android OS, app stores, and web search. By tying its Play Store to pre-installed apps and restricting forks, Google created entry barriers and suppressed innovation. The CCI imposed a ₹1,337.76 crore penalty and directed Google to stop such practices, allow app choice, permit forks, and refrain from forcing Google Search, reinforcing that dominance is legal but abuse is prohibited.

Exploitative Abuse

Abuse of dominance can occur in situations where a firm uses its market power to impose unfair prices or other conditions on consumers, also known as exploitative abuses of dominance. The competition law seeks to use abuse of dominance enforcement to ensure not only that firms do not harm competition by engaging in anticompetitive conduct (exclusionary conduct), but also to ensure that dominant firms do not directly harm consumers with unfair terms, which they can impose only due to their market power (exploitative conduct).

In conventional markets, exploitative abuse usually takes the form of excessive pricing. A dominant firm may charge prices far above the competitive level because consumers have limited alternatives. The idea is that the firm's market power allows it to impose these unfair terms without fear of losing business. In digital markets, harm to consumers doesn't always involve money, many abuses are non-monetary. Like,

Excessive data collection: Dominant digital platforms may require users to provide more personal data than necessary, exploiting their dependence on the platform.

Degrading privacy terms: Platforms may impose privacy terms that reduce consumer control over personal data or increase exposure to tracking.

Locking users into platforms: Firms can make it hard or impossible for users to switch to competing platforms, for instance, through restricted interoperability or pre-installed apps.

Forcing ad exposure: Some digital services require users to view ads, which is a form of non-monetary cost that consumers must pay with attention or personal information[25].

[25] Organisation for Economic Co-operation and Development, *Consumer Data Rights and Competition: Background Note by the Secretariat* (2020), https://one.oecd.org/document/DAF/COMP(2020)1/en/pdf.

Unfair personalised pricing or terms of service: Algorithms can set different conditions for different users, exploiting the firm's market knowledge to charge more or limit benefits unfairly.

Facebook-Germany's Bundeskartellamt Case: (B6-22/16)

In March 2016, Germany's competition authority, the Bundeskartellamt, launched an investigation into Facebook's data practices. The focus was on the company's collection of data from third-party websites and apps, which was merged with users' Facebook profiles to support its advertising services, accounting for 98% of its revenue in 2018. The authority found that Facebook was dominant in the social media market in Germany and that its data practices lacked meaningful user consent. By tying access to its services with extensive data collection, Facebook effectively put users in a "take-it-or-leave-it" position, entrenching its dominant position and potentially limiting competition. Facebook appealed the decision to the Higher Regional Court in Düsseldorf, which suspended the Bundeskartellamt's order in August 2019. The court held that a possible GDPR (General Data Protection Regulation) violation did not automatically constitute an abuse of dominance and emphasised that users consented to Facebook's terms. It also ruled that Facebook's data practices were not exploitative, as users could still share data with other companies, and the Bundeskartellamt had not shown harm to competition. The Bundeskartellamt then appealed to the Federal Court of Justice (Bundesgerichtshof, BGH), which, in June 2020, reinstated the prohibition order. The BGH held that Facebook's terms of service deprived users of choice and could impede competition both in social networking and online advertising markets. However, the court did not fully endorse the Bundeskartellamt's use of GDPR standards as the basis for assessing abuse of dominance. The case reached a conclusive stage on October 10, 2024, when Meta Platforms withdrew its appeal against the Bundeskartellamt's decision. This withdrawal made the FCO's ruling final and binding. Consequently, Meta is now obligated to implement significant changes to its data practices. The FCO had previously determined that Meta abused its dominant position by collecting and combining user data from its own services, such as WhatsApp and Instagram, and third-party websites without obtaining explicit user consent. This practice was deemed an exploitative abuse of dominance under German competition law. Meta must now comply with the FCO's directives, including obtaining voluntary consent from

users before collecting and using their data.[26]

New forms of abuse of dominance in digital markets

Abuse of dominance in digital markets has evolved beyond traditional frameworks due to the unique characteristics of digital platforms.

1. Forced Free Riding

Forced free riding occurs when a dominant digital platform exploits its position as a critical intermediary to appropriate innovations from firms that rely on it to access consumers.[27] In practice, this can take several forms: Content scraping: A platform may copy or display content from competitors on its own interface, reducing traffic to the original content provider.

Google content scraping (2013): Allegedly copied content (like reviews) from other platforms (e.g., Yelp) and displayed it in its own results. When rivals protested, they were allegedly threatened with being delisted. Transaction platforms: Platforms that facilitate sales (like marketplaces) can use data about buyers and sellers to develop and sell their own competing products. This can disadvantage smaller sellers or competitors who rely on the platform to reach customers.[28]

2. Abusive Leveraging (Self-Preferencing)

Abusive leveraging occurs when a dominant firm uses its market power in one area to favour its own products or services in a related market. This can happen in both vertically related markets (e.g., a platform as an input provider and a seller of final products) or horizontally related markets (like search engines and advertising). Cases like the European Commission's Google Shopping investigation show how self-preferencing can disadvantage competitors and limit consumer choice.

[26] Bundeskartellamt, *Facebook Case on Data Collection and Abuse of Dominance* (Bundesgerichtshof, June 23, 2020),https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Downloads/FAQ_Facebook.pdf?__blob=publicationFile&v=2.
[27] Howard A. Shelanski, *Information, Innovation, and Competition Policy for the Internet,* 161 U. Pa. L. Rev. 1663 (2013), https://scholarship.law.upenn.edu/penn_law_review/vol161/iss6/6.
[28] Federal Trade Commission, *Google Press Conference* (Jan. 3, 2013), https://www.ftc.gov/sites/default/files/documents/videos/google-press-conference/130103google-pc.pdf.

3. Privacy Policy Tying

Privacy policy tying is a more recent phenomenon in digital markets. Here, a dominant firm imposes broad data collection terms on users, effectively leveraging its control in one market to strengthen its position in others. By collecting extensive user data from its primary service, the firm can enter new markets (e.g., launching new apps or services) with a significant advantage. It can subsidise aggressive strategies in the new market using insights or revenues from the original market.[29] Competitors in either the original or new markets may be blocked from developing effectively because they cannot access the same level of user data.

Mergers

In assessing mergers in the digital market, competition authorities focus on preventing the lessening of competition when companies in a vertical or adjacent relationship merge. Merger cases in digital markets require analysis because they often have horizontal, vertical and conglomerate effects across several markets.[30] It will be difficult for competition authorities to assess the unilateral effects and coordinated effects of the merger because it is complicated to predict how fast markets evolve with the usual indicators such as price and market share thresholds. These indicators may not make sense, as many of the digital online services are offered for free.[31]

Japan: Google and Fitbit (2021) – Fair Trade Commission (JFTC)

This merger was reviewed by Japan's fair trade commission in 2021, which revolved around the Google acquisition of Fitbit, putting competition in the wearables and digital health markets. Fitbit was a leading producer of fitness trackers and health monitoring devices that could collect sensitive health data of individuals. Google was having a dominant position in the Mobile operating system market through Android.

[29] Daniele Condorelli & Jorge Padilla, *Harnessing Platform Envelopment Through Privacy Policy Tying* (2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3504025.
[30] United Nations Conference on Trade and Development, *Enforcing Competition Law in Digital Markets and Ecosystems: Policy Challenges and Options* (Note by the UNCTAD Secretariat, Trade & Dev. Bd., Trade & Dev. Comm'n, Intergovernmental Grp. of Experts on Competition Law & Policy, 22d Sess., Geneva, July 3–5, 2024, U.N. Doc. TDBC.ICLP74, Apr. 24, 2024).
[31] United Nations Conference on Trade and Development, Enforcing Competition Law in Digital Markets and Ecosystems: Policy Challenges and Options (2024), https://unctad.org/system/files/official-document/ciclpd74_en.pdf.

The authorities were concerned that this merger would create a vertical competition issue. That is, Google might restrict access to the Android application programming interface (API) that rival manufacturers needed to ensure compatibility with Android smartphones. This kind of restriction could amount to input foreclosure, giving Google's own wearable products an artificial advantage. Another concern was Google's access to Fitbit's health and fitness data, which could be leveraged to enhance its targeted advertising, thereby strengthening its position in the online advertising market and undermining competitors' ability to compete on privacy or innovation. To address these risks, the JFTC required Google to maintain open access to Android APIs for all wearable device makers on fair terms and to refrain from using Fitbit users' health data for advertising purposes. These commitments, binding for ten years, were meant to ensure continued interoperability in the wearables ecosystem, preserve consumer privacy, and maintain a level playing field for competition in both the digital health and mobile ecosystem markets.[32]

United States v. Visa Inc., Plaid Inc., and Visa International Service Association, Complaint, Case No. 1:20-cv-02816 (D.D.C. filed Nov. 5, 2020)

The Visa and Plaid merger in 2020 went through significant scrutiny from the U.S. Department of Justice (DoJ) under Section 7 of the Clayton Act, which prohibits mergers that may substantially affect competition. Visa was a dominant player in the online debit and payments market. They proposed to acquire Plaid, which was a fast-growing fintech company that provided application programming interfaces (APIs) enabling apps like Venmo and Robinhood to connect directly with users' bank accounts. The DoJ argued that this was a "killer acquisition" as it was a move designed not to enhance efficiency, but to neutralise an upcoming competitive threat. Internal Visa documents revealed the company viewed Plaid as an emerging rival capable of developing its own payments network that could bypass Visa's infrastructure entirely. The DoJ's complaint alleged that Visa's $5.3 billion purchase was intended to protect its monopoly power in online debit transactions by preventing Plaid's expansion into direct payment services. Confronted with the likelihood of an extended legal battle and potential injunction, Visa abandoned the merger in January 2021, after which the DoJ dropped its

[32] Japan Fair Trade Commission, *The JFTC's Review Results Concerning Acquisition of Fitbit, Inc. by Google LLC (Tentative Translation)* (Jan. 14, 2021), https://www.jftc.go.jp/en/pressreleases/yearly-2021/January/210114r.pdf.

lawsuit. The case marked one of the most prominent examples of U.S. enforcement against potential competition mergers in the digital and fintech sectors.[33]

Challenges to Competition Law Enforcement in the Digital Economy

1. Market Definition and Assessment of Market Power

Competition law usually starts with defining the *relevant market*, both the product market and the geographic market, to assess market power. The Classic approach is to first identify products and services that are substitutable and next to apply the SSNIP test to see whether consumers would switch if the price rose by 5 to 10%. This logic assumes price-based competition and distinct markets, which is exactly where the digital economy is different in its model. Digital platforms rarely operate in isolation. They mostly form a multisided product ecosystem. For example, Google has interlinked services like search, maps, Drive, YouTube, and Android, but all these are connected to each other. This ecosystem advantage lets firms leverage dominance from one service into another. This concept was explored in EU cases like Google Android (Case AT.40099, 2018) and Google Shopping (Case AT.39740, 2017).

In digital markets, it is difficult to apply the SSNIP test because digital platforms offer their products and services, free of cost. So the regulators have proposed the SSNDQ test (small, but significant non-transitory decrease in quality. This test looks at whether users would switch if a platform reduced privacy, increased ads or limited functionality.[34]

2. Data as a Source of Market Power

Data has become a critical driver of market power in the digital economy. Large platforms like Google, Meta (Facebook), and Amazon collect and process vast amounts of user data, which they use to refine algorithms, target advertising, and predict consumer behaviour. This is a feedback loop, where more users generate more data, which in turn improves the service and attracts even more users, creating a self-reinforcing cycle of dominance. Traditional competition law looks at price, output, and consumer welfare to judge market power. But that doesn't work well for digital markets, where most services are free. Here, competition isn't

[33] United States v. Visa Inc. & Plaid Inc., *Complaint* (Dep't of Just., Nov. 5, 2020), https://www.justice.gov/atr/case/us-v-visa-inc-and-plaid-inc.
[34] Organisation for Economic Co-operation and Development, *Rethinking Market Definition* 20–21 (2020), https://www.oecd.org/daf/competition/rethinking-market-definition-2020.pdf.

about price, but it's about quality, innovation, and who controls the data. Platforms with massive datasets have a big advantage because new players without that data can't compete.

A well-known example is Facebook's acquisitions of WhatsApp (2014) and Instagram (2012). Both deals involved platforms with minimal revenue at the time, yet the real value lay in their user base and data assets. The European Commission later acknowledged that such acquisitions can entrench data-driven market power, as combining datasets across platforms enhances a firm's ability to target users and advertisers, while limiting interoperability for rivals.

3. Behavioural Complexity and Algorithmic Conduct

Traditional anti-competitive behaviour, like price-fixing or bid-rigging, is relatively easy to identify and prove. Digital platforms often use subtle, algorithm-driven strategies that can harm competition without obvious signs. For example, recommendation engines, dynamic pricing algorithms, or ad placement systems can favour the platform's own products or partners, making it harder for rivals to compete.[35] Detecting these effects requires advanced technical expertise and access to proprietary code, which the regulatory authorities often lack.

4. Lack of Precedent and Analytical Tools

Courts and regulators are still learning how to measure dominance in digital markets where power comes from data, ecosystem control, or user attention rather than price or output. Because there are few prior cases, authorities are often cautious, worrying that their decisions could be overturned on appeal or challenged for lack of legal clarity. This uncertainty is made worse by different approaches across countries. What one jurisdiction treats as anti-competitive conduct may be allowed elsewhere. The result is legal uncertainty for businesses and enforcement gaps for regulators, making it harder to effectively police digital markets.

Digital Competition Bill 2023

The Digital Competition Bill, 2024, introduced by the Government of India, aims to establish an effective regulatory framework to address anti-competitive practices in the digital economy by acknowledging the unique challenges faced by digital markets. The Bill plans to shift from traditional ex-post enforcement to proactive ex-ante regulation, ensuring timely intervention

[35] Organisation for Economic Co-operation and Development, *Data-Driven Innovation and Competition Policy* (2016), https://www.oecd.org/daf/competition/data-driven-innovation-competition-policy.htm.

and promoting a competitive digital ecosystem. Some of the key provisions included to regulate digital markets are as follows:

- The bill introduces the concept of Core Digital Services (CDS), where it has identified 10 CDS that are integral to the digital economy and susceptible to anti-competitive practices. This includes Search Engines, Social Networks, Video-Sharing Platforms, and Interpersonal Communication Services, Operating Systems and Web Browsers, Cloud Services, Advertising Platforms, Online Intermediation Services (e.g., e-commerce marketplaces, app stores, payment platforms, aggregators).[36] These services form the backbone of digital interactions and commerce, making their regulation crucial to ensure fair competition and consumer welfare.

- To identify entities with substantial market influence, the Bill introduces the concept of Systemically Significant Digital Enterprises (SSDEs). Enterprises offering CDS may be designated as SSDEs based on quantitative thresholds and qualitative criteria.

Quantitative Thresholds:

An enterprise shall be deemed to be a Systemically Significant Digital Enterprise in respect of a Core Digital Service, if:

(a) It meets any of the following financial thresholds in each of the immediately preceding three financial years:

(i) turnover in India of not less than INR 4000 crore; OR (ii) global turnover of not less than USD 30 billion; OR (iii) gross merchandise value in India of not less than INR 16000 crore; OR (iv) global market capitalisation of not less than USD 75 billion, or its equivalent fair value of not less than USD 75 billion calculated in such manner as may be prescribed;

(b) It meets any of the following user thresholds in each of the immediately preceding three financial years in India:

[36] Government of India, *Draft Digital Competition Bill, 2024* (Mar. 2024), https://www.medianama.com/wp-content/uploads/2024/03/DRAFT-DIGITAL-COMPETITION-BILL-2024.pdf.

(i) the core digital service provided by the enterprise has at least one crore end users; OR (ii) the core digital service provided by the enterprise has at least ten thousand business users.

Quantitative Threshold

Even if an enterprise doesn't meet the Quantitative thresholds, the Commission can still designate it as significant if it has a substantial presence in a Core Digital Service, based on available information and relevant factors like

(i) volume of commerce of the enterprise; (ii) size and resources of the enterprise; 155 (iii) number of business users or end users of the enterprise; (iv) economic power of the enterprise; (v) integration or inter-linkages of the enterprise with regard to the multiple sides of market; (vi) dependence of end users or business users on the enterprise; (vii) monopoly position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise; (viii) barriers to entry or expansion including regulatory barriers, financial risk, high cost of entry, marketing costs, technical entry barriers, barriers related to data leveraging, economies of scale and scope, high cost of substitutable goods or services for end users or business users; (ix) extent of business user or end user lock in, including switching costs and behavioural bias impacting their ability to switch or multi-home; (x) network effects and data driven advantages; (xi) scale and scope of the activities of the enterprise; (xii) countervailing buying power; (xiii) structural business or service characteristics; (xiv) social obligations and social costs; (xv) market structure and size of the market; and (xvi) any other factor which the Commission may consider relevant for the assessment.[37]

This "twin-test" approach allows the Competition Commission of India (CCI) to designate firms as SSDEs even if they don't meet the numerical thresholds but possess significant market power.

- Associate Digital Enterprises (ADEs) are affiliate firms linked to SSDEs, such as subsidiaries using shared data or services. ADEs may be subject to the same obligations as SSDEs to prevent internal data misuse and unfair practices across group companies.

[37] *Ibid*

SSDEs and ADEs are held to strict obligations when providing CDS:

- No Self-Preferencing: SSDEs cannot favour their own products or those of affiliates/partners in rankings or display.
- No Restriction on Third-Party Apps: Users must be free to install/use third-party apps, change defaults, etc. SSDEs cannot impose technical or contractual restrictions.
- No Anti-Steering: Business users should be free to promote their services outside the SSDE platform without barriers.
- No Tying or Bundling: SSDEs cannot force users to buy or use an additional product/service as a condition of accessing the core digital service (unless it is integral).

- The Digital Competition Bill imposes strict restrictions on how SSDEs handle data to prevent misuse and ensure fair competition. Business-user data cannot be exploited to compete unfairly. For example, if an e-commerce platform collects sales data from sellers using its marketplace, it cannot use that information to launch a rival product or service that undercuts those sellers. This protects smaller businesses from being disadvantaged by the very platforms they rely on to reach customers.

  User data is also tightly regulated. SSDEs cannot combine or use personal data across services without explicit consent from users. This ensures privacy protection while preventing platforms from leveraging data collected from one service to gain an unfair advantage in another. Platforms must enable data portability, allowing users to move their data to other platforms in a standard format. This prevents lock-in, giving users and businesses freedom to switch services without losing their data, thereby enhancing competition.[38]

- Enforcement Mechanisms

To ensure effective implementation and compliance, the Bill proposes the establishment of a

[38] Ministry of Corporate Affairs, Government of India, *Report of the Committee on Digital Competition Law* (Feb. 27, 2024), https://prsindia.org/files/parliamentry-announcement/2024-04-15/CDCL-Report-20240312.pdf.

Digital Markets Unit (DMU) within the CCI. The DMU will be responsible for: Real-time monitoring of digital markets, Data analysis to identify anti-competitive practices, Issuing directives to SSDEs and ADEs, Conducting market studies and investigations. The CCI will have the authority to investigate, issue compliance orders, and define specific obligations through regulations. Penalties for non-compliance may include fines and other corrective measures, ensuring that SSDEs and ADEs adhere to the prescribed norms.[39]

Conclusion

Competition law enforcement in digital markets faces unprecedented challenges due to the unique characteristics of these markets, such as network effects, multi-sided platforms, rapid innovation cycles, and significant control over data. Traditional competition enforcement tools, while still relevant, often require adaptation and reinforcement by complementary regulatory measures to effectively address dominant market positions and anti-competitive practices in digital ecosystems.

Globally, jurisdictions are increasingly aware of the limitations of ex post competition law enforcement alone in curbing market power abuses by large digital platforms and tech giants. This realisation has led to the incorporation of ex ante regulatory approaches aimed at preventing anti-competitive conduct before it causes irreversible market distortions. Such measures include new laws tailored to digital market dynamics as well as broader merger control reforms to better assess potential effects on innovation and competition.

India's approach to competition law enforcement in digital markets is currently evolving, marked by reliance on the existing Competition Act, 2002, which primarily operates on an ex post basis but lacks specific provisions for digital market challenges. Recognising this gap, India is actively developing the Digital Competition Bill, 2024, which introduces an ex ante regulatory framework targeting large digital platforms.

Effective competition enforcement must also factor in the broad public interest, including fairness, transparency, and data protection, reflecting the multifaceted impact of digital market power on consumers and society. The integration of competition law with sector-specific regulation and proactive policy frameworks is increasingly seen as necessary for safeguarding

[39] *Ibid*

contestability and fostering innovation, consumer choice, and market quality.

In sum, competition law in the digital economy is evolving into a more proactive and flexible enforcement regime, combining traditional legal tools with innovative regulatory approaches. This transition aims to ensure that digital markets remain dynamic, competitive, and fair, benefiting businesses, consumers, and overall economic growth.

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