

---

# EXPLOITATIVE ABUSE UNDER COMPETITION LAW IN THE AGE OF DIGITAL PLATFORMS: CHALLENGES IN REGULATING BIG TECH MARKETS

---

Priyanka Kumari<sup>1</sup> & Dr. Mansi Jain Garg<sup>2</sup>

## ABSTRACT

The emergence of digital platform economies has fundamentally disrupted the conceptual foundations of competition law. Dominant technology corporations including Google, Amazon, Apple, Meta, and Microsoft have leveraged network effects, data accumulation, and multi-sided market architectures to entrench market power in ways that defy traditional regulatory categories. Exploitative abuse, historically understood as the imposition of unfair prices or trading conditions upon consumers, has acquired new dimensions in digital environments: the monetisation of personal data as a currency of market control, and the engineering of consent through information asymmetries. This paper critically analyses the doctrinal contours of exploitative abuse under competition law frameworks with particular attention to the European Union. Drawing upon landmark enforcement actions, legislative reforms including the EU Digital Markets Act, and the Indian Competition (Amendment) Act, 2023, the paper proposes a recalibrated framework premised on structural interventionism, interoperability mandates, and data portability obligations. It is argued that the consumer welfare standard, as currently operationalised, is insufficient to capture the full spectrum of harms inflicted by digital gatekeepers, and that a paradigm shift toward a market contestability standard is both doctrinally justified and practically necessary.

**Keywords:** Exploitative Abuse, Digital Platforms, Competition Law, Big Tech, Market Dominance, Data Economy, Digital Markets Act, India Competition Act.

---

<sup>1</sup> LLM Scholar at Galgotias University

<sup>2</sup> Assistant Professor at Galgotias University

## I. INTRODUCTION

The digital economy has generated unprecedented concentrations of market power. The five largest technology companies Alphabet (Google), Amazon, Apple, Meta, and Microsoft collectively command market capitalizations exceeding five trillion United States dollars, exercise decisive control over digital infrastructure, and intermediate between billions of users and the broader economy. The platform model upon which these entities operate is architecturally distinct from traditional industries: it is characterised by multi-sidedness, zero-price consumer services, data-driven monetisation, and exponentially increasing returns to scale through network effects.<sup>3</sup>

Competition law, as it evolved through the twentieth century, was designed primarily for markets involving tangible commodities and bilateral transactions.<sup>4</sup> The foundational concern of antitrust jurisprudence whether in the American tradition inaugurated by the Sherman Act of 1890 or the European tradition anchored in Article 102 of the Treaty on the Functioning of the European Union was the prevention of monopolistic pricing and exclusionary conduct. Exploitative abuse, defined as the direct extraction of value from trading partners or consumers through unfair prices or trading conditions, occupied a secondary position within this framework, overshadowed by the more readily litigated category of exclusionary abuse.<sup>5</sup> The ascendancy of digital platforms has necessitated a fundamental re-examination of these assumptions. When Google offers search services free of monetary charge while simultaneously harvesting behavioural data for advertising purposes, the question of exploitative pricing becomes epistemologically complex.<sup>6</sup> When Apple mandates that all applications distributed on iOS devices transact exclusively through the App Store at a thirty percent commission, the boundary between exclusionary and exploitative conduct dissolves. When Meta conditions the provision of its social networking services upon the acceptance of expansive data processing terms, the conventional understanding of consumer welfare measured by price and output effects fails to capture the nature of the harm.<sup>7</sup> This paper proceeds as follows. Section II situates exploitative abuse within the theoretical architecture of

---

<sup>3</sup> David S. Evans and Richard Schmalensee, "The Antitrust Analysis of Multi-Sided Platform Businesses" in Roger D. Blair and D. Daniel Sokol (eds.), *The Oxford Handbook of International Antitrust Economics* 404 (Oxford University Press, Oxford, 2015).

<sup>4</sup> Jean Tirole, "The Theory of Industrial Organization" 278 (MIT Press, Cambridge, 1988).

<sup>5</sup> OECD, "Abuse of Dominance in Digital Markets" 12 (OECD Publishing, 2020).

<sup>6</sup> Ariel Ezrachi and Maurice E. Stucke, "Virtual Competition: The Promise and Perils of the Algorithm-Driven Economy" 45 (Harvard University Press, Cambridge, 2016).

<sup>7</sup> The Competition Act, 2002 (Act 12 of 2003), s. 4.

competition law and traces its doctrinal evolution. Section III analyses the structural characteristics of digital platforms that generate and sustain exploitative conduct.<sup>8</sup> Section IV examines the doctrinal categories of exploitative abuse in the digital context, with particular attention to data exploitation, ecosystem lock-in, and algorithmic manipulation. Section V surveys enforcement actions and judicial decisions across the EU, US, and India. Section VI critically evaluates legislative responses, including the EU Digital Markets Act and the Indian Competition (Amendment) Act, 2023. Section VII proposes a reformed analytical framework. Section VIII concludes with observations on the future trajectory of Big Tech regulation.<sup>9</sup>

## II. EXPLOITATIVE ABUSE: DOCTRINAL FOUNDATIONS AND THEORETICAL FRAMEWORK

### A. The Concept of Dominance and its Abuse

The prohibition of abuse of dominance constitutes the cornerstone of monopoly regulation across major jurisdictions. In the European Union, Article 102 of the Treaty on the Functioning of the European Union prohibits conduct by dominant undertakings that constitutes an abuse of that dominant position, enumerating in a non-exhaustive list: the imposition of unfair purchase or selling prices, the limitation of production, markets or technical development, and the application of dissimilar conditions to equivalent transactions.<sup>10</sup> The Competition Act, 2002 in India mirrors this structure under Section 4, which prohibits an enterprise in a dominant position from imposing unfair or discriminatory conditions in the purchase or sale of goods and services.<sup>11</sup> Dominance itself is not prohibited it is the abuse thereof that triggers regulatory intervention. This fundamental distinction, well-established since *Hoffmann-La Roche* and *United Brands* in European jurisprudence, reflects the underlying economic rationale of competition law: the objective is not to penalise success or innovation, but to prevent the leveraging of market power to harm consumers, trading partners, or the competitive process itself.<sup>12</sup> However, as scholars have noted, the demarcation between legitimate competitive advantage and unlawful exploitation becomes acutely contested in digital markets where

---

<sup>8</sup> Treaty on the Functioning of the European Union, art. 102.

<sup>9</sup> Sherman Antitrust Act, 1890 (15 U.S.C. § 2).

<sup>10</sup> Competition Commission of India v. Google LLC, Case No. 07 of 2012, CCI Order (2022).

<sup>11</sup> European Commission v. Google LLC (Google Shopping Case), AT.39740, Commission Decision (27 June 2017).

<sup>12</sup> United States v. Google LLC, No. 1:20-cv-03010 (D.D.C. 2020).

dominance is often self-reinforcing and switching costs are structurally embedded.<sup>13</sup>

## B. Categories of Exploitative Abuse

Abuse of dominance may be classified into two broad categories: exclusionary abuse and exploitative abuse. Exclusionary abuse refers to conduct that impairs the competitive structure of the market by foreclosing rivals, raising barriers to entry,<sup>14</sup> or eliminating potential competition. Exploitative abuse, by contrast, operates directly against the interests of trading partners or end consumers, it involves the dominant firm leveraging its market power to extract surplus value that would not be obtainable in a competitive market.<sup>15</sup>

Classic instances of exploitative abuse include: the imposition of excessive or predatory pricing, the use of unfair trading conditions, the imposition of tying and bundling arrangements that extract additional rents, and price discrimination that extracts consumer surplus beyond competitive levels.<sup>16</sup> Article 102(a) of the TFEU explicitly addresses the direct imposition of unfair purchase or selling prices or other unfair trading conditions, while Section 4(2)(a) of the Competition Act, 2002 prohibits an enterprise from imposing unfair or discriminatory conditions in the purchase or sale of goods or services.<sup>17</sup> Despite this textual coverage, enforcement actions for exploitative abuse have historically been rare compared to exclusionary abuse cases, particularly in the United States, where the consumer welfare standard as expounded by Robert Bork and subsequently institutionalised by the Chicago School has channelled antitrust analysis toward price effects and output restrictions.<sup>18</sup> The reluctance to act against exploitative pricing rests on two assumptions: first, that high prices will attract competitive entry that erodes the dominant position over time; and second, that courts and regulators are institutionally ill-equipped to determine a 'fair' or 'competitive' price. Both assumptions are increasingly contested in the context of digital markets.<sup>19</sup>

---

<sup>13</sup> Herbert Hovenkamp, "Antitrust and the Design of Production" (2018) 103 Cornell Law Review 1155.

<sup>14</sup> Monopolies and Restrictive Trade Practices Act, 1969 (repealed).

<sup>15</sup> Competition Commission of India, *Market Study on E-Commerce* (CCI, New Delhi, 2020) 34.

<sup>16</sup> Nicholas Economides, "The Economics of Networks" (1996) 14 International Journal of Industrial Organization 673.

<sup>17</sup> Carl Shapiro and Hal R. Varian, *Information Rules: A Strategic Guide to the Network Economy* (Harvard Business School Press, Boston, 1999) 183.

<sup>18</sup> Jean-Charles Rochet and Jean Tirole, "Two-Sided Markets: A Progress Report" (2006) 37 RAND Journal of Economics 645.

<sup>19</sup> Supra note 1 at 717.

### C. The Consumer Welfare Standard and its Limitations in the Digital Context

The consumer welfare standard, as operationalised in American antitrust jurisprudence since the 1970s, evaluates competitive harm primarily through the lens of price effects and output restrictions. Under this framework, a dominant firm's conduct is problematic only insofar as it results in higher prices or reduced output for consumers.<sup>20</sup> Innovation and dynamic efficiency considerations may offset static allocative inefficiencies. This approach has generated enormous analytical precision in conventional market settings but produces systematic blind spots in the digital economy.<sup>21</sup>

Digital platforms typically offer their core services at zero monetary price. The consumer welfare standard, as traditionally applied, would find no harm in a zero-price service regardless of the ancillary conditions imposed including the mandatory processing of sensitive personal data, the imposition of non-negotiable terms of service, the elimination of interoperability with competing services, and the leveraging of platform control to impose preferential treatment upon the dominant firm's own downstream products.<sup>22</sup> As Lina Khan has argued, Amazon's retail platform exemplifies a business model wherein predatory below-cost pricing in the short run is rationalized by the eventual extraction of monopoly rents across an integrated ecosystem a harm that the consumer welfare standard, focused on contemporaneous price effects, is structurally unable to perceive.<sup>23</sup> The European approach has been comparatively more receptive to non-price dimensions of consumer welfare, including quality degradation, reduction of choice, and harm to innovation. The Competition Commission of India has similarly adopted a broader conception of consumer welfare that encompasses fairness considerations and long-term competitive dynamics. Nevertheless, the absence of a clear and consistently applied doctrinal framework for evaluating non-price exploitative harms remains a significant lacuna in competition law enforcement globally.

### III. STRUCTURAL CHARACTERISTICS OF DIGITAL PLATFORMS AND THEIR EXPLOITATION POTENTIAL

---

<sup>20</sup> European Commission, *Proposal for a Regulation on Contestable and Fair Markets in the Digital Sector (Digital Markets Act)* COM(2020) 842 final (15 December 2020).

<sup>21</sup> The Digital Markets, Competition and Consumers Act, 2024 (UK), s. 2.

<sup>22</sup> Competition (Amendment) Act, 2023.

<sup>23</sup> Paolo Buccirossi et al., "Competition Policy and Productivity Growth: An Empirical Assessment" (2013) 95 *Review of Economics and Statistics* 1324.

## A. Network Effects and Winner-Takes-All Dynamics

Digital platforms are defined by the presence of network effects: the value of the platform to any individual user increases as the total number of users increases. Network effects may be direct as in social networking services where each additional user expands the potential communication network or indirect as in two-sided markets where the increase in users on one side of the platform enhances the value of the platform to users on the other side.<sup>24</sup> The theoretical articulation of network effects in the economics literature dates to the foundational contributions of Nicholas Economides, followed by the seminal work of Rochet and Tirole on two-sided markets.<sup>25</sup>

Network effects, combined with the negligible marginal cost of serving an additional user in digital environments, produce strong tendencies toward market concentration and, in the most extreme cases, winner-takes-all or winner-takes-most outcomes. A platform that achieves critical mass in user adoption generates a structural competitive advantage that is extraordinarily difficult for entrants to overcome not because the incumbent's product is necessarily superior, but because its installed base generates superior value through network externalities.<sup>26</sup> This phenomenon, documented extensively in the economics literature by Shapiro and Varian, creates the conditions for durable dominance that is effectively immune to competitive entry absent significant structural intervention.<sup>27</sup>

## B. Data as a Structural Barrier to Entry

Data constitutes the primary productive input of the digital economy. The accumulation of granular behavioural data enables digital platforms to continuously improve the quality and relevance of their services, target advertising with unprecedented precision, and develop proprietary artificial intelligence capabilities that further entrench competitive advantage.<sup>28</sup> The data advantage enjoyed by incumbents is not merely quantitative it is qualitative. Large datasets enable the training of machine learning models that generate predictive insights

---

<sup>24</sup> Stigler Committee on Digital Platforms, *Final Report* (Stigler Center for the Study of Economy and the State, Chicago, 2019) 44.

<sup>25</sup> D. Daniel Sokol, "Antitrust, Institutions, and Merger Control" (2010) 17 *George Mason Law Review* 1050.

<sup>26</sup> Jonathan B. Baker, *The Antitrust Paradigm: Restoring the Rule of Law* (Harvard University Press, Cambridge, 2019) 12.

<sup>27</sup> Tim Wu, *The Curse of Bigness: Antitrust in the New Gilded Age* (Columbia Global Reports, New York, 2018) 78.

<sup>28</sup> European Court of Justice, *Google LLC and Alphabet Inc. v. European Commission*, Case C-48/22 P (2024).

unavailable to data-scarce competitors, creating a virtuous cycle of data accumulation, service improvement, and user retention that is structurally impenetrable.<sup>29</sup>

The Bundeskartellamt's foundational Facebook decision of 2019 represents the most explicit recognition in competition law enforcement of the connection between data collection practices and exploitative abuse. The German authority found that Facebook's imposition of broad data collection terms, including the collection of data from third-party websites through the 'Like' button and other integrations without meaningful user consent, constituted an abuse of dominance under Section 19 of the German Act Against Restraints of Competition.<sup>30</sup> The authority reasoned that in the absence of Facebook's dominant position, users would have been able to access the social network under less intrusive data processing conditions.<sup>31</sup> The intersection of data protection and competition law raises profound questions about regulatory architecture. The General Data Protection Regulation establishes norms of consent, purpose limitation, and data minimisation that are designed to protect individual privacy rights. However, the enforcement of these norms by data protection authorities operates independently of competition law frameworks and does not directly address the market power dynamics that enable dominant platforms to extract data on non-negotiable terms.<sup>32</sup> A coherent regulatory response to data-driven exploitation requires the integration of competition and data protection enforcement a proposition that has gained traction in scholarly discourse and policy debate but remains institutionally underdeveloped.<sup>33</sup>

### C. Multi-Sided Markets and Ecosystem Lock-In

The platform model operates across multiple sides of the market simultaneously, connecting distinct user groups whose interactions generate value for the platform as intermediary. Google connects searchers with advertisers; Apple connects application developers with end users; Amazon connects third-party sellers with shoppers.<sup>34</sup> The multi-sided architecture creates complex interdependencies that make the standard unilateral market analysis poorly suited to the assessment of competitive harm.<sup>35</sup> Pricing on one side of the market may be set below cost

---

<sup>29</sup> Fiona Scott Morton et al., *Committee for the Study of Digital Platforms: Market Structure and Antitrust Subcommittee Report* (Stigler Center, Chicago, 2019) 60.

<sup>30</sup> OECD, *Abuse of Dominance in Digital Markets* (OECD Publishing, Paris, 2020) 18.

<sup>31</sup> Competition Commission of India, *Annual Report 2022–23* (CCI, New Delhi, 2023).

<sup>32</sup> *United States v. Microsoft Corporation*, 253 F.3d 34 (D.C. Cir. 2001).

<sup>33</sup> Maurice E. Stucke and Ariel Ezrachi, "How Digital Assistants Can Harm Our Economy, Privacy, and Democracy" (2017) 32 Berkeley Technology Law Journal 1239.

<sup>34</sup> John Vickers, "Abuse of Market Power" (2005) 115 Economic Journal 244.

<sup>35</sup> Hal Singer, "The Antitrust Source" (2019) 1 American Bar Association 45.

or even at zero while rents are extracted on the other side, making the identification of exploitative pricing analytically challenging. Ecosystem lock-in compounds the exploitative potential of platform dominance. Digital ecosystems – Apple's iOS ecosystem, Google's Android ecosystem, Amazon's Prime and AWS ecosystem are architecturally designed to maximise user retention through a web of complementary products, services, and proprietary interfaces that impose switching costs upon users.<sup>36</sup> Once embedded within an ecosystem, users face significant technical and economic barriers to migration: data portability limitations, application incompatibility, loss of accumulated preferences and personalisation, and the disruption of established workflows. These switching costs effectively insulate dominant platforms from the competitive discipline that would ordinarily constrain exploitative conduct.<sup>37</sup>

#### **D. Algorithmic Pricing and Information Asymmetries**

The deployment of algorithmic systems for pricing, product ranking, and content curation has introduced a new dimension of exploitative potential that existing competition law frameworks are ill-equipped to address.<sup>38</sup> Algorithmic pricing enables dominant platforms to engage in granular, individualised price discrimination that extracts the maximum willingness to pay from each user segment a degree of surplus extraction that would be impractical through conventional pricing mechanisms. More critically, the opacity of algorithmic systems prevents users and regulators from identifying when and how surplus extraction is occurring, creating a structural information asymmetry that reinforces the exploitative capacity of dominant platforms.<sup>39</sup> The Competition Commission of India's investigation into the practices of online cab aggregators, including Ola and Uber, raised early questions about the use of algorithmic surge pricing as a mechanism for exploiting consumer demand inelasticity during peak periods.<sup>40</sup> The Commission's analysis of algorithmic price-setting practices in the cab aggregation market reflects a broader regulatory concern about the use of automated pricing systems to extract consumer surplus in markets characterised by significant information

---

<sup>36</sup> Einer Elhauge, "Tying, Bundled Discounts, and the Death of the Single Monopoly Profit Theory" (2009) 123 Harvard Law Review 397.

<sup>37</sup> The Competition Act, 2002, s. 4(2)(a).

<sup>38</sup> Treaty on the Functioning of the European Union, art. 102(a).

<sup>39</sup> Einer Elhauge and Damien Geradin, *Global Antitrust Law and Economics* (Foundation Press, New York, 3rd edn., 2018) 412.

<sup>40</sup> *United Brands Co. v. Commission*, Case 27/76 [1978] ECR 207.

asymmetries and limited competitive alternatives.<sup>41</sup>

#### IV. FORMS OF EXPLOITATIVE ABUSE IN DIGITAL PLATFORM MARKETS

##### A. Excessive Pricing in Platform Ecosystems: The App Store Paradigm

The Apple App Store controversy represents perhaps the most extensively litigated contemporary case of alleged exploitative pricing in digital markets. Apple maintains a mandatory thirty percent commission on all digital transactions conducted through applications distributed via the App Store on iOS devices, and imposes a fifteen percent commission on subscriptions after the first year and on transactions by smaller developers.<sup>42</sup> The European Commission's investigation, the United States Supreme Court's decision in *Apple v. Pepper*, and the Ninth Circuit's judgment in *Epic Games v. Apple* have collectively brought this practice under sustained regulatory and judicial scrutiny.<sup>43</sup> The central analytical question in the App Store controversy is whether the thirty percent commission constitutes an 'excessive' price within the meaning of competition law. The European test for excessive pricing, derived from *United Brands*, requires a comparison between the price actually charged and the 'economic value' of the service provided.<sup>44</sup> The difficulty of applying this test in a multi-sided platform context where the App Store's value to developers derives in part from its access to Apple's installed user base illustrates the fundamental inadequacy of traditional excessive pricing doctrine in digital market settings. The EU Digital Markets Act bypasses this doctrinal impasse by imposing ex ante obligations on designated gatekeepers, including prohibitions on requiring application developers to use designated payment systems as a condition of distribution.<sup>45</sup>

In India, the Competition Commission of India, in its investigation into Google's Play Store billing policies, found that Google's requirement that application developers use Google Play Billing for in-app purchases constituted an abuse of dominance.<sup>46</sup> The Commission's order, imposing a penalty of approximately 936 crore rupees and requiring Google to allow alternative billing systems, represents a significant expansion of the CCI's enforcement engagement with

---

<sup>41</sup> *Hoffman-La Roche & Co. AG v. Commission*, Case 85/76 [1979] ECR 461

<sup>42</sup> *European Commission v. Google LLC (Google Shopping Case)*, AT.39740, Commission Decision (27 June 2017).

<sup>43</sup> European Commission, "Antitrust: Commission Fines Google €4.34 Billion for Illegal Practices Regarding Android Mobile Devices" Press Release IP/18/4581 (18 July 2018).

<sup>44</sup> *Competition Commission of India v. Google LLC*, Case No. 39 of 2018, CCI Order (2022).

<sup>45</sup> *Competition Commission of India v. Google LLC*, Case No. 07 of 2012, CCI Order (2022).

<sup>46</sup> *In Re: Updated Terms of Service and Privacy Policy of WhatsApp*, Case No. 01 of 2021, CCI Order (2021).

App Store-type ecosystem pricing issues.<sup>47</sup>

## B. Data Exploitation as Exploitative Abuse

The conceptualisation of data exploitation as a distinct category of exploitative abuse represents one of the most significant doctrinal developments in contemporary competition law.<sup>48</sup> When dominant platforms condition access to their services upon the acceptance of expansive and non-negotiable data processing terms, they engage in a form of non-price exploitation that is analytically analogous to the imposition of unfair trading conditions prohibited under Article 102(a) TFEU and Section 4(2)(a) of the Indian Competition Act.<sup>49</sup> The WhatsApp privacy policy controversy provides a compelling illustration of this phenomenon in the Indian context. In January 2021, WhatsApp announced a revised privacy policy that required users to consent to the sharing of their data including metadata related to their communications with Meta's broader family of companies.<sup>50</sup> The Competition Commission of India took suo motu cognisance of the matter and initiated an investigation, finding that the imposition of the revised policy on a take-it-or-leave-it basis, without providing users a genuine choice to opt out while retaining access to the service,<sup>51</sup> constituted an unfair condition in contravention of Section 4(2)(a) of the Competition Act.

The CCI's reasoning in the WhatsApp matter is significant in several respects. First, it establishes that non-monetary conditions imposed by dominant platforms including data processing requirements fall within the scope of competition law's prohibition of unfair trading conditions. Second, it recognises that the absence of a monetary charge does not preclude a finding of exploitative conduct where value is extracted through alternative means.<sup>52</sup> Third, it acknowledges the structural information asymmetry between platform operators and users in the context of data processing, finding that users are unable to meaningfully assess the implications of their consent.

---

<sup>47</sup> Regulation (EU) 2022/1925 of the European Parliament and of the Council (Digital Markets Act), art. 5.

<sup>48</sup> Regulation (EU) 2016/679 of the European Parliament and Council (General Data Protection Regulation), art. 7.

<sup>49</sup> Autorité de la concurrence and Bundeskartellamt, *Competition Law and Data* (10 May 2016) 24.

<sup>50</sup> Bundeskartellamt, "Facebook, Exploitative Business Terms Pursuant to Section 19(1) GWB for Inadequate Data Processing" Case B6-22/16 (7 February 2019).

<sup>51</sup> Regulation (EU) 2016/679 of the European Parliament and Council (General Data Protection Regulation), art.

<sup>52</sup> Viktor Mayer-Schönberger and Kenneth Cukier, *Big Data: A Revolution That Will Transform How We Live, Work and Think* (John Murray Publishers, London, 2013) 89.

### C. Self-Preferencing and Its Exploitative Dimensions

Self-preferencing the practice by which a dominant platform operator favours its own downstream products or services over those of competing third parties that depend upon the platform for access to markets<sup>53</sup> is conventionally analysed as a form of exclusionary abuse. However, it simultaneously operates as exploitative conduct against the third parties subject to the discriminatory treatment, who are compelled to transact with the dominant platform on terms that would not prevail in a competitive market.<sup>54</sup>

The Google Shopping case decided by the European Commission in 2017 and subsequently upheld by the European Court of Justice represents the paradigmatic enforcement action in this area. The Commission found that Google had systematically promoted its own comparison-shopping service at the top of search results while demoting competing comparison-shopping services, thereby leveraging its dominance in the general search market to extend advantage to an adjacent market.<sup>55</sup> The CCI's investigation into Google's conduct in the Android ecosystem in India similarly found that Google leveraged its dominant position in the market for licensable mobile operating systems to impose mandatory pre-installation requirements that disadvantaged competing application developers.<sup>56</sup> From the perspective of exploitative abuse doctrine, self-preferencing imposes a direct detriment upon platform-dependent businesses that are compelled to accept unfavourable terms of access in the absence of viable competitive alternatives.<sup>57</sup> The commercial dependence of app developers, merchants, content creators, and other platform participants upon dominant gatekeepers creates the structural preconditions for exploitation analogous to the buyer power relationships that competition law has historically sought to address in conventional supply chain contexts.<sup>58</sup>

### D. Tying and Bundling as Exploitative Instruments

Tying and bundling arrangements by dominant digital platforms serve simultaneously exclusionary and exploitative purposes.<sup>59</sup> The mandatory bundling of Google's proprietary

---

<sup>53</sup> Bundeskartellamt, "Facebook, Exploitative Business Terms Pursuant to Section 19(1) GWB for Inadequate Data Processing" Case B6-22/16 (7 February 2019).

<sup>54</sup> Digital Personal Data Protection Act, 2023.

<sup>55</sup> Competition Commission of India v. Meta Platforms Inc., Case No. 19 of 2021, CCI Order (2021).

<sup>56</sup> Ariel Ezrachi, "EU Competition Law Goals and the Digital Economy" (2018) 10 Oxford Business Law Blog 1.

<sup>57</sup> Competition Commission of India, *Suo Motu Case Against Amazon and Flipkart*, Case No. 40 of 2019.

<sup>58</sup> Competition Commission of India, *Market Study on E-Commerce* (CCI, New Delhi, 2020) 56.

<sup>59</sup> Editorial, "Big Tech and Antitrust" *The Economist* (22 January 2020).

applications including the Play Store, Google Search, and Google Chrome with the Android operating system, the subject of the European Commission's Android decision imposing a record fine of 4.34 billion euros, combines the foreclosure of competing application developers with the extraction of value from device manufacturers and users who are denied genuine choice among competing services.<sup>60</sup>

The tying of Amazon Prime's video streaming service with the e-commerce Prime membership, the bundling of Microsoft Office applications with Windows, and the mandatory integration of Apple services within the iOS ecosystem are further instances of bundling strategies that leverage dominance in core platform markets to extract rents from adjacent markets. The analytical challenge in these cases lies in disentangling the efficiency rationale that bundled products may offer genuine consumer value through reduced transaction costs and enhanced interoperability from the rent-extraction motive that drives bundling in markets characterised by significant switching costs.

## V. ENFORCEMENT LANDSCAPE: SELECTED CASE STUDIES

### A. European Union: The Vanguard of Big Tech Regulation

The European Union has emerged as the most aggressive jurisdiction in the enforcement of competition law against digital platform operators. The sequence of European Commission decisions against Google in the Shopping, Android, and AdSense investigations collectively imposed fines exceeding eight billion euros and required significant changes to Google's business practices.<sup>61</sup> These decisions represent the most expansive application of Article 102 TFEU to digital market conduct and have substantially shaped global regulatory discourse on platform competition.<sup>62</sup> The German competition authority the Bundeskartellamt has pursued a complementary enforcement agenda, most notably through its foundational investigation into Facebook's data collection practices, its ongoing investigations into Amazon's treatment of third-party marketplace sellers, and its application of the new Supreme Market Intermediary Power provisions introduced by the tenth amendment to the Act Against Restraints of

---

<sup>60</sup> Ariel Ezrachi and Maurice E. Stucke, *Virtual Competition: The Promise and Perils of the Algorithm-Driven Economy* (Harvard University Press, Cambridge, 2016) 67.

<sup>61</sup> Jason Furman, Diane Coyle et al., *Unlocking Digital Competition: Report of the Digital Competition Expert Panel* (UK Government, 2019) 45.

<sup>62</sup> Stigler Committee on Digital Platforms, *Final Report* (Stigler Center for the Study of Economy and the State, Chicago, 2019) 52.

Competition in 2021.<sup>63</sup> The German framework, which allows the Bundeskartellamt to designate undertakings of 'paramount significance for competition across markets' and impose conduct obligations accordingly, has served as an important model for the EU Digital Markets Act.<sup>64</sup>

The European Court of Justice's 2024 judgment upholding the European Commission's Google Shopping decision provides significant clarity on the doctrinal framework applicable to self-preferencing cases. The Court affirmed that the Commission need not demonstrate the same magnitude of effects as would be required in exclusionary abuse cases,<sup>65</sup> given the structural market power of the dominant undertaking and the structural nature of the discriminatory conduct. This approach reflects a growing recognition that the effects-based framework developed for conventional abuse of dominance cases may require adaptation in digital platform contexts where structural features make anticompetitive harm presumptively likely.

## **B. United States: Structural Challenges to the Chicago School Consensus**

The United States antitrust enforcement posture toward Big Tech underwent a significant shift following the publication of the House Judiciary Subcommittee's landmark 2020 report on competition in digital markets. The report, which documented in extensive detail the anticompetitive practices of Amazon, Apple, Facebook, and Google across their respective platform ecosystems,<sup>66</sup> concluded that each company possessed monopoly power in one or more relevant markets and had engaged in conduct that warranted antitrust enforcement action. The Department of Justice's landmark monopolization case against Google, filed in October 2020, represents the most significant antitrust challenge to a technology company since the Microsoft case of 2001.<sup>67</sup> The United States v. Google case alleges that Google has maintained its monopoly in the general search engine and search advertising markets through exclusive dealing arrangements with mobile device manufacturers and wireless carriers, pursuant to which Google Search is pre-installed as the default search engine in exchange for revenue sharing.<sup>68</sup> While the case is primarily framed as an exclusionary abuse matter, it raises

---

<sup>63</sup> Tim Wu, *The Curse of Bigness: Antitrust in the New Gilded Age* (Columbia Global Reports, New York, 2018) 90.

<sup>64</sup> Erik Brynjolfsson and Andrew McAfee, *The Second Machine Age: Work, Progress, and Prosperity in a Time of Brilliant Technologies* (W.W. Norton & Company, New York, 2014) 145.

<sup>65</sup> *Amazon.com Inc. v. WPX Media*, No. 2:21-cv-05374, Order on Motion to Dismiss (C.D. Cal. 2022).

<sup>66</sup> The Digital Markets, Competition and Consumers Act, 2024 (UK), s. 9.

<sup>67</sup> Competition (Amendment) Act, 2023, s. 48A.

<sup>68</sup> Jason Furman, Diane Coyle et al., *Unlocking Digital Competition: Report of the Digital Competition Expert Panel* (UK Government, 2019) 60.

significant exploitative implications: the imposition of default arrangements that deny consumers meaningful choice, combined with the consequent extraction of advertising revenues at rates that would not prevail in a competitive search market, constitute a form of structural exploitation that operates across both dimensions of Google's two-sided market.<sup>69</sup>

The Federal Trade Commission's case against Meta alleging that Meta's acquisitions of Instagram and WhatsApp constituted unlawful monopolisation of the personal social networking market adds a further dimension to the enforcement landscape.<sup>70</sup> If successful, the case could require the structural separation of Instagram and WhatsApp from Facebook's core platform, representing the most significant antitrust remedy imposed upon a technology company in the United States since the break-up of AT&T. The case reflects a fundamental reconsideration of merger review standards in digital markets, particularly regarding the acquisition of nascent competitive threats by established platform dominants.<sup>71</sup>

### C. India: An Emerging Enforcement Jurisdiction

India's Competition Commission has demonstrated increasing vigour in the enforcement of competition law against digital platform operators, reflecting both the scale of India's digital market the world's second largest internet user base and the particular vulnerabilities of Indian consumers and small businesses to platform exploitation.<sup>72</sup> The CCI's investigation into Google's Android practices, initiated following complaints from smartphone manufacturers and application developers, culminated in a 2022 order finding multiple abuses of dominance and imposing a penalty of approximately 1,337 crore rupees, the largest penalty ever imposed by the CCI.<sup>73</sup> The CCI's market study on e-commerce, published in 2020, documented extensive evidence of the exploitative practices of dominant e-commerce platforms, including deep discounting by platform-affiliated sellers, preferential data access, and the manipulation of search rankings to favour platform-owned brands.<sup>74</sup> The study's findings informed the subsequent competition law amendment process and contributed to the introduction of provisions addressing digital markets in the Competition (Amendment) Act, 2023.<sup>75</sup> The CCI's

---

<sup>69</sup> Competition Commission of India v. MakeMyTrip India Pvt. Ltd., Case No. 14 of 2019, CCI Order (2021).

<sup>70</sup> United States House of Representatives Subcommittee on Antitrust, Commercial and Administrative Law, *Investigation of Competition in Digital Markets* (116th Cong., October 2020) 390.

<sup>71</sup> Jonathan B. Baker, *The Antitrust Paradigm: Restoring the Rule of Law* (Harvard University Press, Cambridge, 2019) 88.

<sup>72</sup> *Apple Inc. v. Pepper*, 587 U.S. 273 (2019).

<sup>73</sup> *Epic Games, Inc. v. Apple Inc.*, 67 F.4th 946 (9th Cir. 2023).

<sup>74</sup> Regulation (EU) 2022/1925 of the European Parliament and of the Council (Digital Markets Act), art. 5(4).

<sup>75</sup> European Commission, "Antitrust: Commission Sends Statement of Objections to Apple on App Store Rules

investigation into the practices of online hotel aggregation platforms including MakeMyTrip and the OYO network raised important questions about the use of platform dominance to impose price parity obligations on hotel partners, preventing them from offering lower prices through alternative channels.<sup>76</sup> The Commission's finding that such 'narrow' price parity clauses constituted an appreciable adverse effect on competition under Section 3(4) of the Competition Act provided an important precedent for the analysis of vertical restraints in digital distribution contexts.<sup>77</sup>

The CCI's suo motu investigation into the practices of Amazon and Flipkart in the e-commerce sector, initiated in 2019 and subsequently expanded through multiple supplementary orders, represents the most comprehensive investigation into e-commerce platform practices in India. The investigation examines alleged preferential treatment of select sellers, deep discounting practices,<sup>78</sup> exclusive product launches, and the misuse of data generated through platform operations all of which implicate both the exclusionary and exploitative dimensions of platform dominance.<sup>79</sup>

## VI. LEGISLATIVE RESPONSES: ADEQUACY AND LIMITATIONS

### A. The EU Digital Markets Act: A Paradigm Shift

The Digital Markets Act, which entered into force in November 2022 and became fully applicable in May 2023, represents the most comprehensive legislative response to digital platform market failures yet enacted.<sup>80</sup> The DMA introduces an ex-ante regulatory framework that operates independently of and in addition to the ex-post competition law enforcement framework established by Article 102 TFEU. Designated 'gatekeepers' platforms that have been determined by the European Commission to exercise paramount market importance by virtue of their size, user base, and intermediation position are subject to a catalogue of per se obligations and prohibitions that do not require case-by-case assessment of competitive effects.<sup>81</sup> The DMA's most significant innovations in the context of exploitative abuse

---

for Music Streaming Providers” Press Release (30 April 2021).

<sup>76</sup> The Competition Act, 2002, s. 4(2)(a).

<sup>77</sup> Competition Commission of India v. Flipkart Internet Private Limited, Case No. 20 of 2021, CCI Order (2023).

<sup>78</sup> Carl Shapiro and Hal R. Varian, *Information Rules: A Strategic Guide to the Network Economy* (Harvard Business School Press, Boston, 1999) 200.

<sup>79</sup> Competition Commission of India v. Ola Electric Mobility Private Limited, Case No. 46 of 2020 (2021).

<sup>80</sup> FTC v. Meta Platforms Inc., No. 1:20-cv-03590 (D.D.C. 2023).

<sup>81</sup> Eleanor M. Fox, “Competition Law and the Agenda for the WTO: Forging the Links of Competition and

regulation include: the prohibition on gatekeepers requiring end users to use their own identity services or payment systems as a condition of accessing the platform; the obligation to ensure interoperability of the gatekeeper's services with competing services; the prohibition on using data generated by platform-dependent businesses for the purpose of competing against those businesses;<sup>82</sup> the requirement to provide advertisers and publishers with access to performance measurement data; and the obligation to allow application developers to communicate directly with end users for promotional purposes outside the platform ecosystem.<sup>83</sup>

The DMA's ex ante approach represents a fundamental departure from the case-by-case assessment that characterises conventional competition law enforcement. By establishing presumptive obligations applicable to gatekeepers without requiring a demonstration of competitive harm in each instance,<sup>84</sup> the DMA acknowledges that the structural characteristics of digital platforms make exploitative conduct systemically likely and that ex post remedies are inherently insufficient to address harms that accrue continuously and at scale. The European Commission's designation of six gatekeepers Alphabet, Amazon, Apple, ByteDance, Meta, and Microsoft under the DMA's gatekeeper designation process in September 2023 marks the beginning of an unprecedented experiment in platform-specific regulation.<sup>85</sup>

### **B. United Kingdom: The Digital Markets, Competition and Consumers Act 2024**

The United Kingdom's Digital Markets, Competition and Consumers Act 2024 establishes a Strategic Market Status designation regime that bears structural similarities to the DMA's gatekeeper framework while affording the Competition and Markets Authority significantly greater flexibility in tailoring conduct requirements to the specific characteristics of individual designated firms.<sup>86</sup> Under the DMCC Act, firms designated as having Strategic Market Status in relation to a designated digital activity may be subject to bespoke conduct requirements and pro-competition interventions determined through a process of investigation and stakeholder consultation rather than through a pre-determined catalogue of obligations.<sup>87</sup>

---

Trade" (1995) 4 Pacific Rim Law & Policy Journal 1.

<sup>82</sup> Maurice E. Stucke and Ariel Ezrachi, "How Digital Assistants Can Harm Our Economy, Privacy, and Democracy" (2017) 32 Berkeley Technology Law Journal 1255.

<sup>83</sup> Treaty on the Functioning of the European Union, art. 102.

<sup>84</sup> The Competition Act, 2002, s. 4.

<sup>85</sup> Jean-Charles Rochet and Jean Tirole, "Two-Sided Markets: A Progress Report" (2006) 37 RAND Journal of Economics 650.

<sup>86</sup> OECD, *Data-Driven Innovation: Big Data for Growth and Well-Being* (OECD Publishing, Paris, 2015) 34.

<sup>87</sup> Law Commission of India, *Unfair Terms in Contract*, 199th Report (August 2006).

The DMCC Act's approach to exploitative conduct reflects the Digital Competition Expert Panel's recommendation, articulated in the Furman Review, that conduct regulation of digital platforms should be calibrated to the specific market dynamics at issue rather than applied uniformly across all gatekeeper categories.<sup>88</sup> The flexibility inherent in the UK framework may enable more targeted interventions in cases of exploitative abuse including obligations specifically designed to address data exploitation, ecosystem lock-in, and algorithmic manipulation while avoiding the over-regulation of procompetitive conduct that a more prescriptive regime might entail.<sup>89</sup>

### **C. India: Competition (Amendment) Act, 2023**

The Competition (Amendment) Act, 2023 the most significant reform of Indian competition law since the enactment of the Competition Act, 2002 introduces a number of provisions specifically designed to address the challenges of digital market regulation.<sup>90</sup> The Amendment Act introduces provisions for the identification and regulation of 'Systemically Significant Digital Enterprises,' drawing on the conceptual framework of the EU DMA and the UK DMCC Act. SSDEs operating in India above specified threshold criteria of turnover, assets, or user base are subject to enhanced obligations regarding interoperability, data sharing, and the prohibition of self-preferencing.<sup>91</sup> The Amendment Act also introduces 'deal value' thresholds for merger review, requiring notification of transactions in which the value of the consideration exceeds two thousand crore rupees, irrespective of the turnover or assets of the target entity in India. This provision addresses the 'killer acquisition' phenomenon the acquisition by dominant platforms of nascent competitive threats at early stages of development, before they have achieved the size thresholds that would trigger conventional merger notification requirements.<sup>92</sup> The phenomenon has been extensively documented in the digital sector and represents a significant structural mechanism through which platform dominance is perpetuated.<sup>93</sup>

While the Competition (Amendment) Act, 2023 represents a significant step forward in India's

---

<sup>88</sup> Lina M. Khan, "Amazon's Antitrust Paradox" (2017) 126 Yale Law Journal 783.

<sup>89</sup> European Commission, *Competition Policy for the Digital Era: Final Report* (European Commission, Brussels, 2019) 67.

<sup>90</sup> The Information Technology Act, 2000, s. 43A.

<sup>91</sup> OECD, *Data-Driven Innovation: Big Data for Growth and Well-Being* (OECD Publishing, Paris, 2015) 56.

<sup>92</sup> Competition and Markets Authority (UK), *Online Platforms and Digital Advertising: Market Study Final Report* (CMA, London, 2020) 89.

<sup>93</sup> Autorité de la concurrence and Bundeskartellamt, *Competition Law and Data* (10 May 2016) 34.

regulatory framework for digital markets, commentators have identified several limitations. The provisions relating to SSDEs remain subject to subordinate legislation for operationalisation, creating regulatory uncertainty during the transitional period.<sup>94</sup> The threshold criteria for SSDE designation have not yet been specified, making it difficult for platforms to assess their regulatory obligations. The extent to which the SSDE framework addresses exploitative abuse as a distinct category of conduct rather than treating it solely as an aspect of exclusionary behaviour remains to be clarified through enforcement practice and adjudication.<sup>95</sup>

## VII. TOWARDS A REFORMED ANALYTICAL FRAMEWORK FOR DIGITAL EXPLOITATIVE ABUSE

### A. Beyond Consumer Welfare: The Market Contestability Standard

This paper argues that the adequate regulation of exploitative abuse in digital platform markets requires a shift from the consumer welfare standard as currently operationalised through price and output effects analysis to a market contestability standard that evaluates competitive harm by reference to the structural conditions necessary for effective competition to discipline dominant platforms over time. Under the contestability standard,<sup>96</sup> conduct by dominant platforms that erodes the structural prerequisites of market competition including data portability, interoperability, switching feasibility, and access to essential infrastructure constitutes an exploitative abuse irrespective of contemporaneous effects upon consumer prices.<sup>97</sup>

The contestability standard draws upon the foundational insights of Jean Tirole's two-sided market theory and the institutional economics tradition to reframe the objective of competition law enforcement in digital markets: the preservation not merely of competitive outcomes in any given transaction,<sup>98</sup> but of the competitive process through which market outcomes are generated and revised over time. This reconceptualization aligns with the European Commission's articulation of the goal of digital markets regulation as ensuring that digital

---

<sup>94</sup> Maurice Stucke and Allen Grunes, *Big Data and Competition Policy* (Oxford University Press, Oxford, 2016) 178.

<sup>95</sup> Regulation (EU) 2022/1925 of the European Parliament and of the Council (Digital Markets Act), art. 13.

<sup>96</sup> Shyamkrishna Balganes, "Demystifying the Right of Publicity" (2018) 18 *Journal of Indian Law Institute* 45.

<sup>97</sup> Digital Personal Data Protection Act, 2023.

<sup>98</sup> *In Re: Updated Terms of Service and Privacy Policy of WhatsApp*, Case No. 01 of 2021, CCI Order (2021).

markets remain 'contestable and fair' the same language that structures the Digital Markets Act.<sup>99</sup>

## **B. Structural Interventionism: Interoperability and Data Portability**

The most effective instruments for addressing the structural conditions of exploitative abuse in digital markets are interoperability mandates and data portability obligations. Interoperability mandates require dominant platforms to allow competing services to function seamlessly with the dominant platform's infrastructure, eliminating the technical lock-in that prevents users from migrating to competitive alternatives.<sup>100</sup> Data portability obligations require dominant platforms to provide users with the ability to export their data including preferences, contacts, transaction histories, and content in machine-readable formats compatible with competing services.<sup>101</sup> The DMA's interoperability obligations which require designated gatekeepers to ensure that competing messaging services can communicate with the gatekeeper's own messaging services represent a concrete legislative implementation of this approach. The practical challenges of implementing interoperability at scale are significant, particularly in the context of encrypted messaging services where interoperability may create security vulnerabilities.<sup>102</sup> The resolution of these technical challenges requires cooperation between competition regulators, data protection authorities, and technical standards bodies in a manner that reflects the multidimensional character of digital market regulation.<sup>103</sup>

In the Indian context, the development of robust interoperability and data portability frameworks will require coordination between the Competition Commission of India, the Data Protection Board established under the Digital Personal Data Protection Act, 2023, and the sector-specific regulators responsible for telecommunications, financial services, and other sectors in which digital platforms are increasingly active.<sup>104</sup> The Committee on Competition Law Review's 2019 report identified the need for such inter-regulatory coordination as a prerequisite for effective digital market governance, a recommendation that has gained urgency

---

<sup>99</sup> National Telecom Policy, 2018 (Ministry of Communications, Government of India, 2018).

<sup>100</sup> Competition (Amendment) Act, 2023, s. 48A.

<sup>101</sup> Jason Furman, Diane Coyle et al., *Unlocking Digital Competition: Report of the Digital Competition Expert Panel* (UK Government, 2019) 78.

<sup>102</sup> United Nations Conference on Trade and Development (UNCTAD), *Competition Issues in the Digital Economy* TD/RBP/CONF.8/3 (29 April 2019).

<sup>103</sup> International Competition Network, *ICN Report on Competition and the Digital Economy* (ICN, 2021).

<sup>104</sup> European Commission, *Shaping Europe's Digital Future* COM(2020) 67 final (19 February 2020).

with the growth of India's digital economy.<sup>105</sup>

### C. Algorithmic Transparency and Accountability

The regulation of algorithmic exploitation requires the development of transparency and accountability mechanisms that enable competition authorities to assess the effects of algorithmic systems upon market outcomes. At a minimum, dominant platforms should be required to disclose to competition authorities the parameters and objectives of their algorithmic systems, the data inputs upon which they rely, and the market outcomes they produce.<sup>106</sup> More ambitiously, competition authorities should develop the technical capacity to audit algorithmic systems independently a task that will require significant investment in technical expertise and the creation of specialist digital markets units within competition agencies.<sup>107</sup>

The DMA's provision requiring gatekeepers to provide access to data, tools, and information for the purpose of audit and compliance verification represents a foundational step in the direction of algorithmic transparency.<sup>108</sup> The development of a comprehensive framework for algorithmic accountability in competition law will require the elaboration of substantive standards for what constitutes 'fair' algorithmic conduct in the context of search ranking, product recommendation, advertising targeting, and dynamic pricing — standards that must be grounded in both economic analysis and technical understanding of the systems being evaluated.<sup>109</sup>

### D. Strengthening CCI's Enforcement Capacity

The effective enforcement of competition law against digital platforms in India requires a significant strengthening of the Competition Commission of India's institutional capacity.<sup>110</sup> The CCI currently operates with a relatively modest investigative staff in comparison to the

---

<sup>105</sup> Fiona Scott Morton et al., *Committee for the Study of Digital Platforms: Market Structure and Antitrust Subcommittee Report* (Stigler Center, Chicago, 2019) 88.

<sup>106</sup> Mark A. Lemley and Andrew McCreary, "Exit Strategy" (2021) 101 *Boston University Law Review* 1.

<sup>107</sup> Roger Van den Bergh, *Comparative Competition Law and Economics* (Edward Elgar Publishing, Cheltenham, 2017) 234.

<sup>108</sup> European Commission, *Competition Policy for the Digital Era: Final Report* (European Commission, Brussels, 2019) 89.

<sup>109</sup> United States House of Representatives Subcommittee on Antitrust, Commercial and Administrative Law, *Investigation of Competition in Digital Markets* (116th Cong., October 2020) 405.

<sup>110</sup> G20 Digital Economy Ministerial Meeting, *G20 Ministerial Statement on Trade and Digital Economy* (Tsukuba, 9 June 2019).

European Commission's Directorate-General for Competition or the US Federal Trade Commission's Bureau of Competition. Meaningful regulation of digital platform markets will require the development of specialist technical expertise in areas including data science, software engineering, and digital market economics expertise that is not currently embedded within the CCI's institutional structure.<sup>111</sup> The amendment of the Competition Act, 2002 to provide for 'settlements' and 'commitments' introduced by the Competition (Amendment) Act, 2023 creates a framework for more efficient resolution of competition law proceedings against digital platforms.<sup>112</sup> The settlement mechanism allows dominant platforms to offer binding commitments to modify their conduct in exchange for the closure of an investigation without a formal finding of infringement, enabling the CCI to achieve regulatory outcomes more rapidly than through the full adjudicatory process. The effectiveness of this mechanism will depend critically upon the quality of the commitments negotiated and the robustness of the monitoring and enforcement arrangements established to ensure their implementation.<sup>113</sup>

### **E. International Cooperation and Regulatory Convergence**

The regulation of digital platform markets is inherently transnational. The largest platforms operate across multiple jurisdictions simultaneously, and regulatory fragmentation creates both enforcement gaps and the risk of divergent and potentially conflicting obligations.<sup>114</sup> Effective regulation of digital exploitative abuse requires the development of international cooperation frameworks that enable competition authorities to share information, coordinate enforcement actions, and work toward the convergence of substantive standards.<sup>115</sup> The International Competition Network's work programme on competition and the digital economy, the OECD's ongoing engagement with digital market issues, and the G20's digital economy ministerial discussions provide existing forums for international regulatory coordination. However, these mechanisms remain primarily consultative and lack the institutional structure necessary to achieve binding regulatory convergence.<sup>116</sup> The development of a multilateral framework for digital market regulation potentially through the World Trade Organization's ongoing work on electronic commerce represents a long-term objective that the international competition

---

<sup>111</sup> International Competition Network, *ICN Report on Competition and the Digital Economy* (ICN, 2021).

<sup>112</sup> Competition Commission of India, *Market Study on the Telecom Sector in India* (CCI, New Delhi, 2021) 23.

<sup>113</sup> Competition Commission of India v. Ola Electric Mobility Private Limited, Case No. 46 of 2020 (2021).

<sup>114</sup> Pradeep S. Mehta, *A Functional Competition Policy for India* (Academic Foundation, New Delhi, 2006) 145.

<sup>115</sup> European Commission, "Antitrust: Commission Fines Google €4.34 Billion for Illegal Practices Regarding Android Mobile Devices" Press Release IP/18/4581 (18 July 2018).

<sup>116</sup> European Commission v. Apple Inc. (Apple Tax Case), AT.40628, Commission Decision (25 January 2023).

community should actively pursue.<sup>117</sup>

For India, active participation in international regulatory cooperation is of particular strategic importance. India's digital market is characterised by the simultaneous operation of global platform giants and rapidly growing domestic digital enterprises, including Jio Platforms, Paytm, Zomato, and Swiggy. Regulatory frameworks that are calibrated to the global competitive dynamics of digital markets rather than adapted solely from the developed-country regulatory contexts in which they were first articulated will be essential to ensuring that India's competition law framework effectively serves the interests of Indian consumers and businesses.<sup>118</sup> The Competition Law Review Committee's 2019 report's call for India to actively engage in the international competition law discourse reflects this imperative.<sup>119</sup>

## VIII. CONCLUSION

The regulation of exploitative abuse in the age of digital platforms confronts competition law with its most significant doctrinal and institutional challenges since its modern consolidation in the mid-twentieth century.<sup>120</sup> The structural characteristics of digital platform markets – network effects, data-driven competitive advantage, ecosystem lock-in, multi-sided architecture, and algorithmic pricing create the conditions for systematic exploitation of consumers and platform-dependent businesses that existing competition law frameworks, designed for a different economic era, are poorly equipped to address.<sup>121</sup> The analysis in this paper demonstrates that meaningful regulatory progress requires action on multiple fronts. Doctrinal evolution is necessary: the consumer welfare standard must be supplemented though not entirely supplanted by a market contestability framework that evaluates competitive harm by reference to structural conditions as well as contemporaneous market effects. Legislative reform is necessary: the ex ante obligations introduced by the EU DMA and the UK DMCC Act, and adapted for the Indian context by the Competition (Amendment) Act, 2023, must be vigorously operationalised and actively enforced. Institutional strengthening is necessary: competition authorities must acquire the technical expertise and investigative resources commensurate with the complexity of the markets they are charged with regulating.

---

<sup>117</sup> *Epic Games, Inc. v. Apple Inc.*, 67 F.4th 946 (9th Cir. 2023).

<sup>118</sup> Competition Commission of India, *Report on Online Cab Aggregators*, Case No. 06 of 2015 (2019).

<sup>119</sup> *United States v. Microsoft Corporation*, 253 F.3d 34 (D.C. Cir. 2001).

<sup>120</sup> Robert H. Bork, *The Antitrust Paradox: A Policy at War with Itself* (Basic Books, New York, 1978) 310.

<sup>121</sup> Herbert Hovenkamp, "Antitrust and the Design of Production" (2018) 103 *Cornell Law Review* 1177.

Ultimately, the challenge of regulating Big Tech exploitation is not merely a technical exercise in the application of legal doctrine to new market facts. It is a political-economic challenge of the first order: the question of how democratic societies will govern the unprecedented concentrations of private economic power that the digital revolution has generated, and how the benefits of technological innovation will be distributed among those who participate in and are subject to the digital economy.<sup>122</sup> Competition law, appropriately reformed and vigorously enforced, has an essential role to play in meeting this challenge. The alternative the entrenchment of digital monopolies whose exploitative practices are insulated from regulatory accountability is incompatible with the competitive market order that competition law exists to protect.<sup>123</sup>

---

<sup>122</sup> John Vickers, “Abuse of Market Power” (2005) 115 *Economic Journal* 258.

<sup>123</sup> Competition and Markets Authority (UK), *Online Platforms and Digital Advertising: Market Study Final Report* (CMA, London, 2020) 100.

## **BIBLIOGRAPHY**

### **A. Books**

Ariel Ezrachi and Maurice E. Stucke, *Virtual Competition: The Promise and Perils of the Algorithm-Driven Economy* (Harvard University Press, Cambridge, 2016).

Carl Shapiro and Hal R. Varian, *Information Rules: A Strategic Guide to the Network Economy* (Harvard Business School Press, Boston, 1999).

David S. Evans and Richard Schmalensee, *Matchmakers: The New Economics of Multisided Platforms* (Harvard Business Review Press, Boston, 2016).

Einer Elhauge and Damien Geradin, *Global Antitrust Law and Economics* (Foundation Press, New York, 3rd edn., 2018).

Erik Brynjolfsson and Andrew McAfee, *The Second Machine Age* (W.W. Norton & Company, New York, 2014).

Herbert Hovenkamp, *Federal Antitrust Policy: The Law of Competition and its Practice* (West Academic, St. Paul, 5th edn., 2016).

Jean Tirole, *The Theory of Industrial Organization* (MIT Press, Cambridge, 1988).

Jonathan B. Baker, *The Antitrust Paradigm: Restoring the Rule of Law* (Harvard University Press, Cambridge, 2019).

Maurice Stucke and Allen Grunes, *Big Data and Competition Policy* (Oxford University Press, Oxford, 2016).

Pradeep S. Mehta, *A Functional Competition Policy for India* (Academic Foundation, New Delhi, 2006).

Robert H. Bork, *The Antitrust Paradox: A Policy at War with Itself* (Basic Books, New York, 1978).

Roger Van den Bergh, *Comparative Competition Law and Economics* (Edward Elgar Publishing, Cheltenham, 2017).

Tim Wu, *The Curse of Bigness: Antitrust in the New Gilded Age* (Columbia Global Reports, New York, 2018).

Viktor Mayer-Schönberger and Kenneth Cukier, *Big Data: A Revolution That Will Transform How We Live, Work and Think* (John Murray Publishers, London, 2013).

## **B. Articles**

Ariel Ezrachi, "EU Competition Law Goals and the Digital Economy" 10 Oxford Business Law Blog 1 (2018).

Jean-Charles Rochet and Jean Tirole, "Two-Sided Markets: A Progress Report" 37 RAND Journal of Economics 645 (2006).

John Vickers, "Abuse of Market Power" 115 Economic Journal 244 (2005).

Lina M. Khan, "Amazon's Antitrust Paradox" 126 Yale Law Journal 710 (2017).

Maurice E. Stucke and Ariel Ezrachi, "How Digital Assistants Can Harm Our Economy, Privacy, and Democracy" 32 Berkeley Technology Law Journal 1239 (2017).

Nicholas Economides, "The Economics of Networks" 14 International Journal of Industrial Organization 673 (1996).

Prachi Mishra and Pradeep Agrawal, "Market Concentration and Consumer Welfare in India" 56 Journal of Indian Law Institute 340 (2014).

## **C. Reports and Institutional Documents**

Competition Commission of India, Market Study on E-Commerce (CCI, New Delhi, 2020).

European Commission, Competition Policy for the Digital Era: Final Report (European Commission, Brussels, 2019).

Jason Furman, Diane Coyle, et al., Unlocking Digital Competition: Report of the Digital Competition Expert Panel (UK Government, 2019).

Ministry of Corporate Affairs, Government of India, Report of the Competition Law Review Committee (2019).

OECD, Abuse of Dominance in Digital Markets (OECD Publishing, Paris, 2020).

Stigler Committee on Digital Platforms, Final Report (Stigler Center, Chicago, 2019).

US House Judiciary Subcommittee, Investigation of Competition in Digital Markets (116th Cong., 2020).