RECALIBRATING DIGITAL DOMINANCE: THE EMERGENCE OF A DISTINCTIVE EX POST COMPETITION REGIME IN INDIA

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ABSTRACT

The regulation of Big Tech in India is increasingly framed through the question of whether the country should adopt an ex ante regime comparable to the European Union's Digital Markets Act ('DMA'). This framing, however, risks obscuring an important development within Indian competition law: in the absence of a dedicated ex ante digital competition statute, the Competition Commission of India ('CCI') has progressively adapted the existing abuse-of-dominance framework to address platform-specific forms of market power. This article examines whether these developments constitute merely transitional enforcement pending legislative reform or the emergence of a distinct model of digital competition governance.

The article argues that Indian digital competition law is developing a form of calibrated ex post enforcement. This model retains the case-specific structure of the Competition Act, 2002 while adapting conventional theories of dominance and abuse to network effects, ecosystem leverage, algorithmic intermediation, data accumulation and cross-market foreclosure. The article demonstrates this development through a doctrinal examination of the CCI's jurisprudence concerning search bias, the Android ecosystem, e-commerce platforms, data-driven conduct and recent settlement practice. It argues that the CCI's approach is characterised not only by an increasing willingness to recognise non-price and ecosystem-based theories of harm, but also by a degree of remedial caution where intervention may affect widely relied-upon digital infrastructure.

The article further contends that India's regulatory trajectory cannot be assessed solely by reference to the DMA. Differences in market structure, institutional capacity and infrastructural dependence affect the relative costs and benefits of ex ante and ex post intervention. The continuing deliberation over the proposed Digital Competition Bill therefore raises a more fundamental question than whether India should replicate the European model: when does case-by-case competition enforcement cease to provide an adequate response to persistent platform power, and what institutional conditions justify a transition towards ex ante regulation? The article concludes by proposing a framework for calibrated digital competition enforcement that combines stronger institutional capacity, disciplined remedial design and a carefully sequenced relationship between the existing Competition Act and any future ex ante digital competition regime.

Keywords: Competition law; Digital competition; abuse of dominance; Big Tech; platform markets; Competition Commission of India; ex post enforcement; ex ante regulation; Digital Markets Act; digital market power; India.

I. INTRODUCTION

India's relationship with dominant digital platforms is most often narrated at one remove from competition law itself, as a story about content regulation, data sovereignty, or geopolitical positioning[1]. This paper takes a narrower and, it argues, more analytically productive starting point: it asks what Indian antitrust doctrine, on its own terms, has said and can say about platform dominance, and what the continued absence of an ex ante digital competition regime reveals about the institutional choices embedded in India's existing competition-law framework.

The question is significant because Indian digital competition enforcement has developed along a different institutional pathway from the European model. For much of the past decade, the CCI has relied principally upon the ex post architecture of the Competition Act, 2002: relevant markets are defined, dominance is established, alleged conduct is assessed against the statutory prohibition on abuse of dominant position, and remedies are imposed subject to appellate review. The proposed Digital Competition Bill represented a potential departure from this architecture by introducing ex ante obligations for Systemically Significant Digital Enterprises (‘SSDEs’), thereby allowing specified forms of conduct to be regulated without requiring the CCI first to establish a conventional abuse-of-dominance case. The contrast between these models is therefore not merely legislative. It concerns the allocation of institutional responsibility for identifying, assessing and remedying digital market power.

[1] See, e.g., Julien Chaisse, Georgios Dimitropoulos & Irma Mosquera, Law and Digital Transformation in the Indo-Pacific: An International Economic Law Perspective, 26 J. World Investment & Trade 575 (2025).

The proposed ex ante framework has not, however, displaced the existing competition-law regime[2].The Digital Competition Bill remains a proposal rather than an operative source of legal obligations, while the institutional and policy debate surrounding the appropriate thresholds, scope and design of SSDE regulation continues[3]. The CCI's continuing reliance on the Competition Act therefore assumes greater significance: the absence of a dedicated ex ante regime has not left a regulatory vacuum, but has instead placed greater pressure on existing abuse-of-dominance doctrine to address forms of conduct that are characteristic of digital ecosystems[4].

This legislative position has an important consequence for competition-law analysis. The proposed Digital Competition Bill cannot presently be treated as the operative framework governing digital-platform conduct in India. The relevant legal framework remains the Competition Act, 2002, as amended by the Competition (Amendment) Act, 2023, under which the CCI continues to assess anti-competitive conduct through existing provisions concerning agreements, abuse of dominant position and combinations. The 2023 amendments nevertheless altered the enforcement landscape by introducing settlement and commitment mechanisms and by modifying the regulation of combinations. These developments make the present period particularly significant: Indian digital competition law is not simply awaiting an ex ante statute, but is simultaneously developing new procedural and remedial tools within the existing framework.

This article argues that the continued reliance on the Competition Act has produced more than a temporary substitute for ex ante digital regulation. Through its recent platform jurisprudence, the CCI is developing a form of calibrated ex post enforcement in which conventional concepts of market definition, dominance and abuse are being adapted to digital theories of harm while remedial intervention remains sensitive to the structure and contestability of the affected ecosystem. The resulting model is neither a simple continuation of traditional antitrust nor an incomplete version of the DMA. It represents an emerging Indian approach whose coherence,

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[2] See Ministry of Corp. Affairs, Report of the Committee on Digital Competition Law (Mar. 12, 2024); Standing Comm. on Fin., Thirty-Seventh Report, 18th Lok Sabha, Action Taken Report on the Competition Commission of India and the Digital Landscape (presented Aug. 10, 2026) (recommending finalisation of the Digital Competition Bill, an expanded scope covering virtual assistants and cloud services, and stronger CCI capacity, while noting that only 113 of 195 sanctioned CCI posts were filled as of March 31, 2024).

[3] See Request for Proposal, Market Study on Digital Competition, Gov't e-Marketplace (Nov. 3, 2025); MediaNama, Govt Orders Market Study to Refine India's Digital Competition Bill (Aug. 2026).

[4] Global Competition Review, India's Digital Competition Law in 'Cold Storage' (2026); MediaNama, Finance Committee Wants the Govt to Finalise Digital Competition Bill (Aug. 2026).

limits and institutional sustainability require independent examination.

Following this introduction, the article proceeds in seven further parts. Part II develops the analytical framework for understanding digital dominance under Indian competition law, focusing on multi-sided markets, network effects, data advantages, ecosystem leverage and the statutory assessment of dominance. Part III examines the interaction between competition law and adjacent regulatory regimes, particularly data protection and intermediary regulation, insofar as these regimes affect the design of competition remedies. Part IV constitutes the core doctrinal analysis and reconstructs the CCI's digital-platform jurisprudence through the cases concerning search bias, Android, e-commerce, data-driven conduct and recent settlement practice. Part V examines the proposed Digital Competition Bill and asks whether the movement towards ex ante regulation represents an inevitable next stage of Indian competition law or a regulatory choice requiring greater institutional justification. Part VI provides a comparative analysis of India, the European Union and a selected emerging competition jurisdiction. Part VII develops proposals for remedial calibration, institutional capacity and the future relationship between ex post competition enforcement and ex ante digital regulation. Part VIII concludes.

II. RECONSTRUCTING DIGITAL DOMINANCE UNDER INDIAN COMPETITION LAW

Digital markets do not render conventional competition-law concepts obsolete; rather, they alter the economic conditions in which those concepts must be applied. The central difficulty for Indian antitrust enforcement is therefore not whether digital markets can be analysed through the concepts of relevant market, dominance and abuse, but whether those concepts can adequately capture forms of market power generated by network effects, data accumulation, ecosystem integration and non-price competition. This distinction is important. Treating digital markets as categorically exceptional risks creating an artificial divide between “traditional” and “digital” competition law, while treating them as economically identical risks overlooking mechanisms through which platform power can become self-reinforcing.[5]

[5]See Shaked Spier, The Politics of Platform Technologies: A Critical Conceptualization of the Platform and Sharing Economy, 38 Phil. & Tech. 12 (2025); OECD, The Evolving Concept of Market Power in the Digital Economy – Note by India, DAF/COMP/WD(2022)32.

A. Multi-Sided Markets, Network Effects and the Assessment of Dominance

Platform markets frequently connect multiple groups of users whose participation is economically interdependent. Search engines connect users and advertisers; operating systems connect device manufacturers, application developers and consumers; e-commerce marketplaces connect buyers and sellers; and social-media platforms connect users with advertisers. The resulting market structure complicates conventional market-definition analysis because competitive conditions on one side of the platform may affect competitive conditions on another. It does not, however, eliminate the relevance of market definition. The analytical task is instead to determine which sides of the platform constitute economically distinct markets, which sides are interdependent, and whether the platform's position on one side confers market power that can be exercised on another.

Network effects add a second dimension to this problem. A platform may become more valuable as participation increases, creating feedback effects that strengthen the incumbent's position and raise the cost of entry for rivals. In competition-law terms, the significance of network effects lies not in their mere existence but in whether they contribute to durable entry barriers, constrain multi-homing or reinforce the incumbent's ability to exclude competitors. This is particularly relevant to the assessment of dominance under section 19(4) of the Competition Act, 2002, which permits the CCI to consider factors including entry barriers, market structure, consumer dependence and the economic strength of an enterprise.

The implication is that digital dominance should not be inferred simply from scale, user numbers or technological prominence. The relevant inquiry is whether the economic characteristics of the platform create a position of strength that enables the enterprise to operate independently of competitive forces or to affect competitors, consumers or the relevant market in its favour. The distinctive feature of digital competition law therefore lies less in replacing conventional dominance analysis than in identifying how digital-market characteristics make such dominance durable, transferable across adjacent markets, or difficult for rivals to challenge.

B. Data as a Source of Competitive Advantage

Data should similarly be treated as a potential source of competitive advantage rather than as an automatic proxy for market power. The competitive significance of data depends upon its relevance, scale, quality, replicability and the extent to which access to it improves the platform's ability to attract users, optimise services, target advertising or develop complementary products. Data may become particularly significant where the accumulation of information generates feedback effects: greater user participation produces more data; additional data improves the platform's service or targeting capabilities; and improved performance attracts further users.

For the purposes of abuse-of-dominance analysis, the critical question is therefore not whether a platform possesses large datasets, but whether the manner in which data is collected, combined or deployed contributes to a durable position of market power or facilitates exclusionary or exploitative conduct. This distinction becomes particularly important in cases where data practices simultaneously implicate privacy interests. Competition law should not assume that every privacy violation is an antitrust violation, but neither should the non-price character of a data practice prevent the CCI from examining whether it alters competitive conditions in a relevant market.[6]

C. Infrastructural Dependence and the Costs of Intervention

This article uses the term "infrastructural dependence" to describe a situation in which firms or consumers within a market rely substantially upon services, technologies or ecosystems controlled by a dominant platform, such that an intervention directed at restoring competition may also affect access to economically significant digital infrastructure. The concept does not imply that dominant platforms should receive regulatory protection from competition enforcement. Rather, it identifies an additional remedial consideration: the competitive benefits of intervention must be assessed alongside the possibility that poorly designed remedies may disrupt legitimate economic activity that depends upon the platform.

Infrastructural dependence is particularly relevant where the dominant platform operates across interconnected layers of the digital economy. An operating system may support application distribution; an application store may govern payments; a cloud platform may provide essential computing infrastructure; and a marketplace may simultaneously function as an intermediary and a competitor. In such circumstances, conduct occurring in one market may generate effects across an ecosystem, while a remedy directed at one layer may alter competitive conditions

[6] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on Contestable and Fair Markets in the Digital Sector (Digital Markets Act), 2022 O.J. (L 265) 1.

elsewhere.

The concept therefore provides a basis for understanding why the CCI may recognise significant theories of harm while nevertheless favouring behavioural or negotiated remedies over immediate structural intervention. The existence of infrastructural dependence should not weaken the prohibition against abuse of dominance; it should instead inform the proportionality, sequencing and monitoring of the remedy imposed.

D. Ecosystem Leverage and Cross-Market Dominance

The analysis of digital dominance cannot be confined to the market in which a platform initially acquires its position of strength. Digital platforms frequently operate through interconnected ecosystems in which a firm controlling one layer of the digital stack can use that position to influence competitive conditions in adjacent markets. Ecosystem leverage arises where control over one product, service or infrastructural layer provides the platform with an advantage in another market, whether through preferential treatment of its own services, restrictions imposed on complementary products, tying or bundling, control over access points, or the use of data generated in one market to strengthen its position in another.

This form of leverage creates a particular challenge for abuse-of-dominance analysis because the competitive harm may not occur in the market in which the platform is conventionally understood to be dominant. A platform may, for example, possess substantial market power in an operating system while using that position to influence application distribution, payment services or other complementary markets. Similarly, an online marketplace may simultaneously function as an intermediary for independent sellers and compete with those sellers through its own products or affiliated entities. The relevant competition-law question is therefore not simply whether the platform is dominant in one market, but whether that position enables it to alter the conditions of competition in an adjacent market.

Indian competition law is capable of addressing this phenomenon without treating ecosystem power as an independent category of illegality. Sections 4(2)(a), 4(2)(b), 4(2)(d) and 4(2)(e) of the Competition Act, 2002 provide several doctrinal routes through which exclusionary conduct across interconnected markets may be examined. In particular, section 4(2)(e), concerning the use of a dominant position in one relevant market to enter into or protect another relevant market, provides an important statutory basis for analysing cross-market leverage. The provision is significant because it recognises that the exercise of market power may produce competitive effects beyond the boundaries of the market in which dominance is established.

The digital context nevertheless requires caution. Not every expansion from one market into another constitutes abusive leveraging. Platforms may legitimately integrate complementary services, realise efficiencies, improve interoperability or offer consumers a more coherent product. A finding of abuse should therefore depend upon whether the conduct uses an existing position of market power to distort the competitive process in the adjacent market in a manner that cannot be adequately justified by legitimate commercial or efficiency considerations. The distinction is particularly important in digital markets, where product integration is often an intrinsic feature of the business model rather than an exceptional strategy.

Ecosystem leverage also complicates the conventional temporal understanding of competition harm. Where several services are interconnected, an exclusionary strategy may initially produce little observable harm in the affected market while gradually increasing the platform's ability to control complementary services. By the time competitive effects become measurable, entry barriers may have increased, users may face substantial switching costs and rivals may have become dependent upon the incumbent's infrastructure. This possibility strengthens the case for early detection of exclusionary strategies, but it does not by itself justify abandoning the evidentiary discipline of ex post competition law.

The resulting implication for Indian competition policy is one of calibrated intervention. The CCI should be capable of examining conduct across the boundaries of individual markets where ecosystem relationships make such an analysis economically necessary, while maintaining a clear distinction between legitimate ecosystem integration and abusive leveraging. This approach also explains why digital competition enforcement cannot be assessed solely through the binary choice between ex post and ex ante regulation. Where ecosystem power produces identifiable exclusionary conduct, the existing abuse-of-dominance framework may remain capable of intervention. Where the concern instead arises from persistent structural characteristics that repeatedly enable cross-market leveraging, the case for supplementary ex ante obligations becomes stronger. The central regulatory question is therefore whether the competitive harm can be effectively identified and remedied through case-specific enforcement or whether the ecosystem's structure makes such intervention systematically too late.

III. COMPETITION LAW AT THE INTERSECTION OF DIGITAL REGULATION

Although this paper's focus is competition law, the CCI does not adjudicate in isolation. Three adjacent regimes shape the practical range of remedies available to it. First, the Intermediary Guidelines impose due diligence, traceability, and grievance-redress obligations on significant social media intermediaries, framing platforms as conduits for speech rather than economic actors, a classification that can sit uneasily beside a simultaneous finding of dominance in the same platform's advertising or search markets[7]. Second, the Digital Personal Data Protection Act, 2023 ("DPDP Act") designates certain platforms as "significant data fiduciaries" subject to enhanced compliance duties,[8] introducing data-minimisation obligations that can pull in the opposite direction from competition remedies that mandate data portability or interoperability. Third, sector-specific regimes governing e-commerce, digital payments, and telecommunications licensing overlay additional obligations on platforms that operate across these domains simultaneously.

A. Competition Law and Data Governance

The relationship between competition law and data governance is increasingly important because data can simultaneously function as an input, a competitive asset and an object of regulatory protection. The accumulation and use of data may contribute to a platform's ability to improve its services, target advertising, personalise products and develop complementary offerings. At the same time, the collection and processing of personal data are subject to legal obligations that pursue objectives distinct from the preservation of competition. The existence of these overlapping regulatory interests creates a risk of both under-enforcement and over-enforcement: competition authorities may overlook the competitive consequences of data practices by treating them solely as privacy questions, while an expansive competition-law approach may improperly convert every data-protection concern into an antitrust violation.

Indian law should therefore maintain a functional distinction between the two regimes. The Digital Personal Data Protection Act, 2023 is principally concerned with the lawful processing and protection of digital personal data, whereas the Competition Act, 2002 is concerned with preserving competitive conditions and preventing conduct that harms the competitive process.

[7] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Gazette of India, pt. II, sec. 3(i) (Feb. 25, 2021).
[8] Digital Personal Data Protection Act, No. 22 of 2023, § 10, India Code (2023).

A data practice may implicate both regimes, but the legal inquiry under each remains different. For competition law, the relevant question is whether the acquisition, combination, restriction or exploitation of data contributes to market power or facilitates exclusionary or exploitative conduct. The privacy consequences of the same practice may be relevant to understanding consumer dependence or the quality dimension of competition, but they do not eliminate the requirement to establish a competition-law theory of harm.

This distinction is particularly important in markets in which services are offered at a monetary price of zero. In such markets, conventional price-based indicators may provide limited information about competitive conditions. Users may instead compete through attention, data, engagement or other non-monetary dimensions of service quality. A deterioration in privacy conditions may therefore, in an appropriate case, form part of a broader assessment of non-price competition. The proposition should nevertheless be applied cautiously: privacy should not become a substitute for demonstrating market power, exclusionary conduct or competitive harm.

The stronger analytical approach is consequently one of regulatory complementarity. Data-protection law can establish standards concerning the lawful processing of personal information, while competition law can examine whether the manner in which data is obtained or deployed reinforces market power or restricts competitive entry. Where the same conduct engages both regimes, coordination between institutions may improve regulatory effectiveness, but the distinct legal thresholds and objectives of each regime should remain intact.

B. Platform Regulation and the Risk of Regulatory Overlap

The growing regulation of digital platforms creates a second institutional challenge. Digital enterprises may simultaneously be subject to competition law, data-protection obligations, consumer-protection rules, intermediary regulation and sector-specific requirements. This regulatory plurality is not necessarily undesirable. Different regimes address different forms of harm and may operate at different stages of the digital value chain. The difficulty arises when regulatory objectives overlap without a clear allocation of institutional responsibility.

For competition law, the principal concern is that regulatory overlap may obscure the distinction between conduct that is unlawful because it harms competition and conduct that is undesirable for other reasons. A platform's content-moderation failure, privacy violation or consumer-protection breach should not automatically be characterised as an abuse of dominance merely because the enterprise possesses substantial market power. Conversely, the existence of another regulatory regime should not prevent the CCI from examining conduct that independently produces exclusionary effects. The appropriate approach is therefore not jurisdictional isolation, but analytical separation followed by institutional coordination.

This distinction is particularly significant in digital ecosystems because the same contractual or technological practice may have several legal consequences. An exclusivity arrangement may raise competition concerns, while simultaneously affecting consumer choice; an interoperability restriction may have implications for both sectoral regulation and market entry; and a data-sharing requirement may engage privacy obligations while also affecting rivals' ability to compete. The CCI should therefore identify the competition-specific theory of harm before relying upon obligations arising under another regulatory framework.

A coordinated regulatory architecture is especially important if India moves towards an ex ante digital competition regime. Ex ante obligations applicable to systemically significant enterprises would inevitably interact with existing competition enforcement and with other digital regulatory frameworks. Without clear institutional boundaries, the resulting system could create duplicative compliance obligations, inconsistent standards or competing remedial directions. The transition towards ex ante regulation should therefore be accompanied by mechanisms for inter-regulatory coordination, information sharing and principled allocation of jurisdiction.

C. Why India Should Not Simply Replicate the DMA

The European Union's Digital Markets Act provides an important reference point for the design of ex ante digital competition regulation, but its institutional logic should not be treated as a universal template. The DMA responds to a particular conception of digital-market power: certain large platforms are identified as gatekeepers on the basis of prescribed criteria and are made subject to specified obligations intended to prevent practices considered capable of distorting contestability and fairness. The model consequently reduces reliance upon case-by-case proof of abuse once the statutory conditions for designation and the relevant obligation are satisfied.

India's competition framework has developed differently. The Competition Act, 2002 is based primarily upon effects-oriented, case-specific enforcement, while the proposed movement towards an ex ante regime must operate alongside an existing competition authority, established jurisprudence and a developing institutional capacity for digital-market analysis. The relevant policy question is therefore not whether India should choose between the Competition Act and the DMA as mutually exclusive models. It is how ex ante obligations, if adopted, can supplement rather than unnecessarily displace the strengths of existing Indian competition enforcement.

There are also differences in the economic and infrastructural context in which platform regulation operates. The significance of digital services in India extends beyond consumer convenience to financial services, communications, commerce, employment and access to markets. The costs of regulatory error may therefore differ from those in jurisdictions where alternative digital infrastructure and competing ecosystems are more readily available. This does not provide dominant platforms with immunity from intervention. It does, however, strengthen the case for carefully sequenced remedies and institutional assessment of whether a particular intervention is likely to improve contestability without creating disproportionate disruption.

The appropriate lesson from the DMA is consequently methodological rather than imitative. Ex ante regulation may be justified where recurring forms of platform conduct are difficult to remedy through individual proceedings, where market power is persistent and where the costs of delayed intervention exceed the costs of imposing prospective obligations. But those conclusions should be demonstrated against Indian market conditions rather than assumed from the European experience. India's regulatory objective should be to identify the circumstances in which ex ante intervention adds value to the existing competition framework, not to reproduce the institutional architecture of another jurisdiction merely because the underlying platforms are global.

D. The Regulatory Choice: Ex Post, Ex Ante or Hybrid?

The debate between ex post and ex ante regulation is often presented as a binary choice. For India, however, the more appropriate question is whether different forms of intervention should operate at different stages of the competitive process. Ex post enforcement remains valuable where the relevant conduct can be identified, its effects can be established and an appropriately tailored remedy can restore competitive conditions. Its principal advantage is flexibility: the

CCI can account for differences between platforms, markets and business models rather than applying identical obligations to enterprises that may present materially different competitive risks.

Ex ante regulation offers a different advantage. Where certain forms of conduct recur across markets, where competitive harm is difficult to identify only after exclusion has occurred, or where the same platform possesses durable structural advantages that repeatedly generate similar risks, prospective obligations may reduce enforcement delay and improve predictability. The principal risk is over-inclusion. Rules formulated before a specific competitive harm is established may restrict conduct that produces legitimate efficiencies or consumer benefits, particularly in rapidly evolving technological markets.

A hybrid approach can therefore provide a more appropriate institutional model for India. Under such a framework, ex ante obligations would address a limited class of clearly identified practices associated with enterprises possessing demonstrable systemic significance, while the Competition Act would continue to govern conduct requiring effects-based assessment, market-specific analysis and the application of conventional abuse-of-dominance principles. The two regimes should not operate as competing systems. Ex ante regulation should address recurring structural risks, while ex post enforcement should retain responsibility for novel or context-dependent conduct.

The principal challenge is consequently one of institutional design. India must determine not only which enterprises should be subject to ex ante obligations, but also which conduct should fall within those obligations, when the CCI should retain concurrent jurisdiction, how conflicts between regulatory obligations should be resolved, and what mechanisms should permit obligations to evolve as market conditions change. The effectiveness of any future digital competition regime will depend less upon the formal choice of “ex ante” or “ex post” than upon whether the institutional architecture permits each form of regulation to be deployed where its comparative advantages are greatest.

IV. THE CCI'S DIGITAL JURISPRUDENCE: FROM MARKET POWER TO CALIBRATED ENFORCEMENT

The development of Indian digital competition law is most clearly visible in the CCI's treatment of platform conduct under the existing Competition Act, 2002. Rather than creating a separate doctrinal category for digital enterprises, the CCI has generally worked within the existing framework of relevant-market definition, assessment of dominance and identification of abusive conduct, while adapting these concepts to the economic characteristics of platform markets[9]. The resulting jurisprudence is significant not merely because it expands the range of digital conduct examined under section 4, but because it demonstrates how an ex post authority can respond to ecosystem-based forms of market power without abandoning the effects-oriented structure of Indian competition law.

The cases examined below reveal three related developments. First, the CCI has increasingly recognised that dominance in digital markets may arise from control over an important platform or access point rather than from conventional price-based indicators.[10] Second, the authority has examined whether such positions can be leveraged into adjacent markets through self-preferencing, tying, discriminatory access conditions, contractual restrictions or other forms of exclusionary conduct.[11] Third, the evolution of settlement and commitment mechanisms has introduced greater remedial flexibility, allowing certain disputes to be resolved without requiring the full adjudicatory process.[12] Taken together, these developments support the proposition that Indian competition law is moving towards a model of calibrated ex post enforcement.

A. Google Android and the Regulation of Ecosystem Leverage

The CCI's proceedings concerning Google's Android ecosystem provide one of the clearest examples of the difficulty of regulating platform power through conventional abuse-of-dominance doctrine. The Android ecosystem does not consist of a single product market operating in isolation. It connects mobile operating systems, application distribution, search

[9] In re Alphabet Inc., Google LLC, Google Ireland Ltd., Google India Pvt. Ltd. & Google India Digital Servs. Pvt. Ltd., Case Nos. 07 of 2020, 14 of 2021 & 35 of 2021 (Competition Comm'n of India Oct. 20, 2022).

[10] Google LLC v. Competition Comm'n of India, Comp. App. (AT) No. 1 of 2023 (NCLAT Mar. 29, 2023) (substantially upholding the CCI's finding of abuse of dominance and the penalty of approximately ₹1,337 crore, while setting aside four of the CCI's behavioural directions; appeal pending before the Supreme Court of India); see also Neelanjan Modi & Trishla Modi, A Cross-Comparative Analysis of Google's Self-Preferencing and Android Cases in India, EU and the US, 25 Competition & Reg. Network Indus. 174 (2024).

[11] In re Alleged Anti-Competitive Practices by Amazon & Flipkart, Case No. 40 of 2019 (Competition Comm'n of India Jan. 13, 2020).

[12] In re Vijay Gopal v. Big Tree Entertainment Pvt. Ltd. (BookMyShow), Case No. 22 of 2022 (Competition Comm'n of India Mar. 12, 2026) (finding Big Tree Entertainment dominant in the market for online intermediation services for movie-ticket booking but declining to find a contravention of Section 4(2)(a)(i), 4(2)(b)(i) or 4(2)(c) for want of evidence of foreclosure); see also Global Competition Review, Asia-Pacific Antitrust Review 2026 – India: Calibration over Codification (2026) (describing the effects-based closure of the CCI's BookMyShow investigation).

services, application developers, original equipment manufacturers and consumers. Google's position across these interconnected layers therefore creates the possibility that control over one component of the ecosystem may influence competitive conditions in another.[13]

The significance of the Android proceedings lies in the CCI's treatment of these relationships as economically relevant to the assessment of abuse. Rather than examining Android solely as a software product, the CCI considered the relationships between the operating system, Google's proprietary applications and the distribution of applications and services. The resulting analysis demonstrates how ecosystem leverage can be examined through existing statutory provisions, particularly where contractual or technological conditions attached to one product affect competition in an adjacent market.[14]

The case also illustrates the importance of distinguishing between integration and foreclosure. Platform integration may generate legitimate efficiencies: consumers may benefit from interoperability, manufacturers may benefit from access to a coherent application ecosystem, and developers may benefit from a common technical environment. The competition concern arises when integration is accompanied by conditions that materially restrict the ability of competing services to obtain distribution or reach users. The relevant question is therefore not whether Google integrated its services into Android, but whether the manner of integration used Google's position in one layer of the ecosystem to protect or extend its position in another.

This distinction is particularly relevant to section 4(2)(e) of the Competition Act, 2002. The provision recognises the use of a dominant position in one relevant market to enter into, or protect, another relevant market. In digital ecosystems, this statutory language assumes renewed significance because the economic relationships between adjacent services may be much stronger than those ordinarily observed in traditional markets.[15] A dominant operating system can affect application distribution; an application store can influence payment services; and control over default settings can affect access to competing search or content services.

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[13] Competition Comm'n of India, In re Updated Terms of Service and Privacy Policy for WhatsApp Users, Case No. 01 of 2021 with Case Nos. 05 & 30 of 2021 (Nov. 18, 2024) (imposing a penalty of ₹213.14 crore on Meta and a five-year prohibition on WhatsApp sharing user data with other Meta companies for advertising purposes). On appeal, the NCLAT upheld the penalty but set aside the five-year advertising-data-sharing prohibition, WhatsApp LLC v. Competition Comm'n of India, Competition Appeal (AT) Nos. 1 & 2 of 2025 (NCLAT Nov. 4, 2025); the CCI's appeal against that reversal was pending before the Supreme Court of India as of early 2026.

[14] Competition (Amendment) Act, No. 9 of 2023, §§ 48A–48D, India Code (2023).

[15] Kshitiz Arya v. Google LLC, 2025 SCC OnLine CCI 16 (Apr. 21, 2025) (settlement order under Section 48A(3)).

The Android proceedings consequently demonstrate the capacity of ex post enforcement to address ecosystem leverage without treating ecosystem power itself as unlawful. The CCI was required to identify the relevant markets, establish Google's dominant position and connect the challenged conduct with a theory of competitive harm. This case-specific structure provides an important safeguard against the over-extension of competition law, but it also exposes a limitation: where similar forms of leveraging repeatedly arise across interconnected markets, individual proceedings may become slow and resource-intensive.

The Android experience therefore supports a qualified conclusion. Existing Indian competition law is capable of addressing significant forms of ecosystem abuse, particularly where the conduct produces an identifiable exclusionary effect. The case does not, however, establish that ex post enforcement will always be sufficient. Its significance for the broader regulatory debate lies precisely in demonstrating both the adaptability of the existing framework and the evidentiary burden that accompanies that adaptability.

B. Matrimony.com and the Problem of Search-Based Self-Preferencing

The CCI's examination of Google's search practices in relation to specialised search services provides a different illustration of digital-platform power. In a traditional market, a vertically integrated firm may be able to favour its own downstream product through preferential access, discriminatory treatment or control over distribution. Search platforms create a technologically different but economically comparable problem: the platform determines the ordering and visibility through which users access competing services.[16]

The concern with search-based self-preferencing is not that a platform places its own services prominently as such. Search results necessarily involve ranking decisions, and those decisions may improve consumer welfare by providing more relevant or integrated services. The competition issue arises where a platform possessing substantial market power uses control over an important access point to systematically disadvantage competing services that depend upon that access.

This distinction makes search bias particularly significant for the development of Indian digital competition doctrine. The competitive harm may occur without a conventional increase in

[16] Press Release No. 10/2025-26, Competition Comm'n of India, CCI Approves Google's Settlement Proposal in Android TV Case (Apr. 21, 2025).

price. Users may continue to receive the search service without monetary payment, while rival specialised-search providers experience reduced visibility, traffic and ability to compete. The relevant competitive parameter is therefore access to users and the conditions under which rivals can reach them.[17]

The CCI's approach illustrates the broader proposition that digital dominance requires attention to non-price mechanisms of competition. Ranking, default settings, visibility, interoperability and access conditions may perform an economic function comparable to price or contractual exclusivity in traditional markets. The legal analysis should nevertheless continue to require a demonstrated connection between the platform's conduct and competitive foreclosure. A theory of self-preferencing should not become a presumption that every favourable treatment of a platform's own service constitutes abuse.

The case therefore demonstrates both the strength and discipline of ex post enforcement. The CCI can examine technological design and ranking practices within section 4 without creating an entirely new category of digital illegality. At the same time, the need to establish the competitive consequences of particular ranking practices means that enforcement remains dependent upon detailed market and economic analysis.

C. E-Commerce Platforms: The Dual Role of Intermediary and Competitor

The competition concerns surrounding Amazon and Flipkart demonstrate another distinctive form of digital-market power. Unlike the search and operating-system cases, marketplace platforms occupy an intermediary position between buyers and sellers while potentially competing with the very sellers whose transactions they facilitate. This dual role creates the possibility of conflicts between the platform's function as an intermediary and its incentives as a participant in downstream markets.[18]

The competitive concern becomes more pronounced where the platform possesses substantial control over visibility, access to consumers, data generated through marketplace transactions, logistics, ranking systems or preferred sellers. A platform may therefore influence the competitive conditions under which sellers operate while simultaneously having access to

[17] Kshitiz Arya, 2025 SCC OnLine CCI 16 (Agrawal, Member, dissenting).
[18] Competition (Amendment) Act, No. 9 of 2023, § 5(d), India Code (2023) (inserting deal value threshold provisions into Section 5 of the Competition Act, 2002).

information concerning those sellers and their products. The resulting concern is not merely vertical integration in the traditional sense. It is the possibility that the intermediary controls the rules of competition in a market in which it may itself have commercial interests.

From a competition-law perspective, however, the existence of this dual role does not by itself establish abuse. Marketplace integration may generate substantial efficiencies by reducing transaction costs, improving logistics, expanding consumer choice and facilitating entry by smaller sellers. The relevant inquiry must instead focus on whether particular practices use the platform's intermediary position to foreclose competing sellers or favour affiliated or preferred interests without adequate competitive justification.

The e-commerce cases are therefore particularly useful for understanding the relationship between market power and data. The platform may obtain commercially valuable information from transactions occurring through the marketplace and may subsequently use that information in ways that affect downstream competition. Data becomes relevant not simply because it is valuable, but because control over transaction-level information may give the intermediary an informational advantage over firms that depend upon the platform for access to consumers.

This setting also highlights the importance of remedies. A remedy directed at discriminatory ranking, preferential treatment or data use must account for the technical and commercial functioning of the marketplace. An overly broad intervention may interfere with legitimate algorithmic ranking or platform efficiencies, while an insufficiently precise remedy may leave the exclusionary mechanism intact. The appropriate response therefore requires close attention to the specific mechanism through which market power is exercised.

The e-commerce experience reinforces the article's central proposition. Indian competition law is capable of examining platform conduct through existing concepts of vertical foreclosure, discriminatory treatment and abuse of dominance. Yet the complexity of marketplace ecosystems increases the informational demands placed upon the CCI. The effectiveness of ex post enforcement consequently depends not only upon the statutory framework but also upon the authority's ability to understand algorithms, platform incentives, data flows and multi-sided market effects.

D. WhatsApp, Meta and Data-Driven Non-Price Competition

The proceedings concerning WhatsApp and Meta illustrate the increasing importance of non-price dimensions of competition in digital markets. The controversy surrounding WhatsApp's data-sharing practices raised questions about the relationship between a platform's privacy terms, user dependence and competition. The case is particularly significant because the service is supplied without a conventional monetary price to users, while the platform's business model depends substantially upon data and advertising-related monetisation.

The competition-law significance of such conduct should nevertheless be distinguished from the separate question of whether a data-processing practice complies with data-protection law. The fact that a practice may raise privacy concerns does not automatically establish an abuse of dominant position. The competition inquiry must identify whether the conduct is connected to the platform's market power and whether it produces an exclusionary or exploitative effect recognised under the Competition Act.

The case demonstrates why quality should be understood as a potential dimension of competition in zero-price digital markets. Users may compete over privacy, functionality, security, interoperability and other aspects of service quality even where no monetary payment is required. A material deterioration in such dimensions may therefore form part of an assessment of competitive conditions. But the analytical discipline remains important: privacy cannot simply be substituted for competitive harm.

The WhatsApp proceedings also illustrate the difficulty of separating platform markets from the broader ecosystem in which data is generated and monetised. A platform may collect information through one service and use that information to improve or monetise another service. The resulting data flows may strengthen network effects and create competitive advantages that are difficult for rivals to replicate. Data can therefore operate as a form of ecosystem leverage even where the challenged conduct does not involve an explicit contractual restriction on rivals.

The subsequent appellate history of the WhatsApp proceedings illustrates the article’s broader claim about remedial calibration. On appeal, the NCLAT upheld the CCI’s finding of abuse and the associated penalty, but set aside the five-year prohibition on sharing WhatsApp user data with other Meta companies for advertising purposes, holding that the remedy went beyond what the established contravention required. The CCI's challenge to that reversal was, at the time of writing, pending before the Supreme Court of India. The episode is instructive irrespective of its ultimate outcome: it shows an appellate authority actively testing the proportionality of a structural-style remedy in a data-driven case, which is precisely the form of remedial discipline this article associates with calibrated ex post enforcement.

For the present argument, the principal significance of the WhatsApp proceedings is methodological. They demonstrate that Indian competition law is increasingly required to examine competitive parameters beyond price and output. They also show why digital competition cases may overlap with other regulatory regimes without becoming identical to them. The challenge for the CCI is to preserve the competition-specific character of its inquiry while recognising that privacy, data and consumer dependence may influence the competitive process.

E. BookMyShow and Platform Dependency

The CCI's treatment of platform-intermediation disputes such as those involving BookMyShow illustrates a further dimension of digital market power: dependency upon an important intermediary. Where a platform provides an economically significant route through which businesses reach consumers, access to that platform may become commercially indispensable even without the platform possessing a traditional infrastructural monopoly.

This form of dependency raises questions concerning exclusivity, access conditions, contractual restrictions and the ability of the platform to influence the terms on which complementary businesses reach consumers. The competition concern is strongest where the platform's market position allows it to impose conditions that materially restrict a counterparty's ability to deal with rivals or to develop alternative distribution channels.

The concept of infrastructural dependence developed earlier in this article helps explain the significance of such cases. The existence of dependence should not itself be treated as proof of dominance or abuse. Rather, it is relevant to understanding the economic consequences of contractual and technological restrictions. Where a rival can easily switch to alternative intermediaries, a restrictive contractual condition may have limited foreclosure effects. Where alternative channels are weak or costly, the same condition may substantially alter competitive conditions.

The case therefore demonstrates why digital competition analysis must examine the practical alternatives available to users and business partners. Formal contractual freedom may not accurately reflect economic bargaining power where one platform controls a particularly important access point. At the same time, competition law must avoid converting commercial success or contractual advantage into automatic liability. The relevant inquiry remains whether the platform's conduct amounts to an abuse of a dominant position within the meaning of section 4.

F. Settlement and Commitment: The Emergence of Remedial Calibration

The introduction of settlement and commitment mechanisms through the Competition (Amendment) Act, 2023 adds an important procedural dimension to India's evolving digital competition regime. Traditional infringement proceedings are designed to determine whether prohibited conduct occurred and, where appropriate, impose remedies following an adversarial investigation and adjudication. Settlement and commitment mechanisms permit a different approach in appropriate circumstances, allowing concerns to be addressed through negotiated obligations without necessarily requiring the authority to complete the entire infringement process.

This development is particularly relevant to digital markets because technological and commercial conditions can change more rapidly than conventional litigation cycles. A remedy that is appropriate when proceedings commence may become less effective by the time a final order is issued. Negotiated commitments can potentially reduce this temporal problem by allowing behavioural obligations to be formulated and monitored during the life of the dispute.

The advantages should not, however, be overstated. Negotiated remedies may create concerns concerning transparency, consistency and the development of precedent. If significant questions of digital competition are repeatedly resolved without a full determination of the underlying legal issues, the resulting body of precedent may provide less guidance to market participants. Settlement mechanisms must therefore complement, rather than displace, reasoned adjudication in cases involving important questions of statutory interpretation or novel theories of harm.

The appropriate approach is consequently one of remedial calibration. Where the principal objective is to restore competitive conditions and the relevant conduct can be addressed through measurable behavioural obligations, negotiated resolution may offer substantial advantages. Where the dispute concerns a fundamental question concerning the scope of section 4, the development of a new theory of harm, or conduct with potentially broad implications for digital markets, authoritative adjudication may be more valuable.

This distinction strengthens the article's broader argument. The evolution of Indian digital competition law is not occurring solely through substantive tests of dominance and abuse. It is also occurring through changes in the way competition concerns are investigated and remedied. The combination of conventional abuse-of-dominance enforcement with settlement and commitment mechanisms provides the CCI with a more flexible enforcement toolkit without requiring the immediate creation of a wholly separate digital competition statute.

G. What the Jurisprudence Reveals About Indian Ex Post Enforcement

Viewed collectively, the CCI's digital-platform jurisprudence reveals a regulatory model that is more adaptive than the conventional description of Indian competition law as purely reactive would suggest. The authority has been required to consider multi-sided markets, network effects, ecosystem leverage, non-price competition, data advantages and platform dependency within a statutory framework that was not designed specifically for digital platforms. The cases demonstrate that the existing law possesses sufficient conceptual flexibility to address a substantial range of digital conduct.

At the same time, the cases expose the limits of that flexibility. Each enforcement proceeding requires market definition, assessment of dominance, identification of the relevant conduct and demonstration of competitive harm. Where exclusionary strategies are cumulative, where effects become visible only after competitors have exited, or where several interconnected practices produce a common structural effect, the case-specific nature of ex post enforcement may make intervention slower and more resource-intensive.

The jurisprudence therefore supports neither an unqualified defence of the Competition Act nor an automatic case for ex ante regulation. Instead, it supports a more differentiated conclusion. Ex post enforcement is comparatively well suited to conduct whose competitive effects can be identified within a defined market and addressed through a tailored remedy. Its limitations become more significant where the same form of conduct is repeatedly capable of being deployed by systemically important platforms, where market power is reinforced by network effects and ecosystem integration, and where delayed intervention may make restoration of competition substantially more difficult.

This distinction provides the basis for assessing the proposed ex ante framework. The relevant question is not whether the CCI has been capable of regulating Big Tech. The cases demonstrate that it has. The more difficult question is whether the existing model can continue to provide effective and timely protection as digital ecosystems become increasingly integrated. That question should determine the circumstances in which India supplements its ex post regime with targeted ex ante obligations.

V. THE EX ANTE TURN: THE PROPOSED DIGITAL COMPETITION FRAMEWORK AND THE LIMITS OF REGULATORY TRANSPLANTATION

The development of India's digital competition framework cannot be understood solely through the jurisprudence of the Competition Commission of India ('CCI'). The proposed move towards ex ante regulation represents an alternative institutional response to the limitations identified in the preceding analysis. The Committee on Digital Competition Law ('CDCL'), constituted by the Ministry of Corporate Affairs, recommended in March 2024 the introduction of a Digital Competition Bill providing for the designation of Systemically Significant Digital Enterprises ('SSDEs') and imposing specified obligations upon them[19]. The proposed framework reflected the growing international preference for regulating certain forms of platform conduct prospectively rather than requiring the competition authority to establish an abuse of dominance in each individual proceeding.

The proposed framework is significant because it represents a shift in the point at which competition law intervenes. Under the existing Competition Act, 2002, the CCI ordinarily proceeds through the sequential determination of a relevant market, dominance, abusive conduct and competitive effect. An ex ante regime would alter this sequence for designated enterprises and specified services. Once an enterprise satisfies the statutory conditions for designation, prescribed obligations would apply to identified categories of conduct without requiring the authority to establish a conventional abuse-of-dominance case each time the conduct occurs. The distinction is therefore institutional as much as substantive: ex post enforcement asks whether a particular exercise of market power has produced or is likely to

[19] Ministry of Corp. Affairs, Report of the Committee on Digital Competition Law, at ch. 3 (Mar. 12, 2024); PRS Legislative Research, Digital Competition Law (2024).

produce an unlawful competitive effect, whereas ex ante regulation identifies certain recurring risks and regulates them prospectively.

A. From Dominance-Based Enforcement to Systemic Significance

The SSDE concept represents a departure from the traditional architecture of Indian abuse-of-dominance law. Dominance under section 4 of the Competition Act is assessed in relation to a relevant market and through factors identified in section 19(4), whereas an ex ante designation framework seeks to identify enterprises whose position and activities are sufficiently significant to justify prospective obligations.[20] The latter approach is premised upon the proposition that certain digital platforms possess characteristics that make conventional case-by-case enforcement insufficiently timely or predictable.

The distinction should not, however, be understood as a choice between "dominant" and "non-dominant" enterprises. Systemic significance and dominance perform different regulatory functions. A firm may possess substantial economic importance because of its scale, user base, ecosystem position or control over an important digital service, while a conventional dominance analysis may produce a more market-specific conclusion. Conversely, a firm may be dominant in a narrowly defined market without possessing the broader ecosystem characteristics that would justify a general ex ante regime. The design of any SSDE framework must therefore explain why systemic significance provides an appropriate trigger for prospective obligations.

This distinction also demonstrates why the designation mechanism is central to the legitimacy of ex ante regulation. If the threshold is too low, the regime may capture enterprises whose conduct does not present the structural risks that justify prospective regulation. If it is too high, enterprises capable of producing significant and persistent competitive harm may remain outside the framework. Quantitative thresholds can provide predictability, but they cannot completely capture the economic significance of digital ecosystems. Qualitative assessment and an effective opportunity to contest designation are therefore important safeguards against both over-inclusion and under-inclusion.[21]

[20] Storyboard18, Industry Endorses Withdrawal of Draft Digital Competition Bill (Sept. 2024); Standing Comm. on Fin., supra note 2.
[21] MediaNama, Govt Orders Market Study to Refine India's Digital Competition Bill (Aug. 2026).

B. Conduct Obligations and the Transformation of the Competition Inquiry

The proposed ex ante framework would also change the manner in which particular forms of conduct are assessed. Prohibitions concerning self-preferencing, anti-steering, use of non-public business-user data and interoperability are directed at practices that have repeatedly generated competition concerns in digital markets. Their common feature is that they seek to address mechanisms through which a platform can use control over an important access point or ecosystem to influence competitive conditions in adjacent markets.

The attraction of such obligations is clear. Where a particular practice repeatedly produces exclusionary effects and the relevant platform possesses durable structural advantages, requiring a fresh investigation in every instance may impose significant enforcement costs. A prospective prohibition can reduce uncertainty, shorten intervention time and make compliance obligations clearer for both platforms and business users.

The difficulty, however, is that the same conduct may have different competitive effects in different technological and commercial settings. Self-preferencing may, in some circumstances, facilitate integration or improve the relevance of a service. Interoperability may promote switching and contestability, but mandatory interoperability may also create security, privacy or innovation costs. Restrictions on the use of non-public business-user data may protect dependent firms from informational exploitation, but the design of the restriction must distinguish competitively harmful use from legitimate data processing necessary to operate the platform.

The central design challenge is therefore to avoid converting economic theories of harm into categorical assumptions of illegality without sufficient attention to technological context. Ex ante regulation can reduce the evidentiary burden associated with recurring conduct, but it simultaneously shifts the risk of error from under-enforcement towards over-inclusion. The justification for each obligation must consequently rest upon evidence that the relevant practice creates sufficiently persistent competitive risks to warrant prospective intervention.

C. Regulatory Transplantation and the Indian Context

The proposed Indian framework has been influenced significantly by the European Union's Digital Markets Act (‘DMA’). This influence is neither surprising nor inherently problematic.

Digital platforms operate across jurisdictions, and the economic characteristics that generate competition concerns in one jurisdiction may also arise elsewhere. Comparative borrowing can therefore reduce regulatory experimentation costs and provide policymakers with tested conceptual tools.

The difficulty arises when institutional arrangements are transplanted together with substantive rules without examining whether their underlying conditions are comparable. The DMA operates within a distinctive European institutional environment, including a supranational regulatory authority, established competition-law jurisprudence under Article 102 TFEU, judicial review through the Court of Justice of the European Union and coordination with national competition authorities. The effectiveness of the substantive obligations cannot therefore be evaluated independently of the institutional machinery through which they are implemented.

India's institutional setting differs materially. The CCI has developed substantial experience in digital-market enforcement, but its digital competition jurisprudence has largely evolved through individual investigations and adjudicatory proceedings rather than through a pre-existing gatekeeper regime. Moreover, India's digital economy contains both large foreign technology companies and significant domestic business groups operating across several digital markets. The regulatory problem is therefore not reducible to a relationship between a small number of global gatekeepers and dependent business users.

Regulatory transplantation should consequently be understood as a process of adaptation rather than replication. The relevant question for India is not whether the proposed framework resembles the DMA, but whether the institutional and economic assumptions underlying each obligation remain valid in Indian markets. A rule justified by the structure of European digital markets may require different thresholds, exceptions, designation procedures or enforcement mechanisms when applied within India's regulatory and infrastructural environment.

D. Why the Absence of Ex Ante Regulation Is Not a Regulatory Vacuum

The continuing reliance upon the Competition Act does not mean that India lacks a response to digital-platform power. As demonstrated in Part IV, the CCI has already examined ecosystem leverage, search-related conduct, marketplace practices and data-driven theories of harm through the existing abuse-of-dominance framework. The proposed ex ante regime should therefore be understood as a supplement to an existing body of competition law rather than as the creation of digital competition law from first principles.

This observation is important for the sequencing debate. If the existing regime can address a substantial proportion of harmful conduct, the justification for immediate ex ante regulation must rest upon demonstrating a category of harm that ex post enforcement systematically fails to address. The relevant evidence may include repeated infringement by the same category of platforms, lengthy enforcement cycles, difficulty in proving effects after competitive foreclosure has occurred, or remedies that cannot adequately restore competition once an ecosystem has become entrenched.

Conversely, where the CCI can identify the conduct, establish the relevant market, demonstrate competitive harm and impose an effective remedy, ex post enforcement retains important advantages. It permits the authority to distinguish between conduct that is harmful in one market and conduct that generates efficiencies in another, thereby reducing the risk of false positives.[22]

The appropriate regulatory question is therefore not whether India should choose ex ante regulation because digital markets are inherently different. It is whether particular forms of platform conduct have become sufficiently recurring, foreseeable and difficult to remedy that prospective obligations generate greater benefits than continued case-specific enforcement.

E. Toward a Hybrid Architecture

The analysis suggests that the strongest justification for India's proposed ex ante framework lies not in replacing the Competition Act but in supplementing it. A hybrid architecture would preserve the CCI's existing ability to investigate novel and context-dependent conduct while imposing prospective obligations upon enterprises whose systemic significance and market position create recurring competitive risks.

Such a framework should contain at least four safeguards. First, designation should be based upon transparent quantitative and qualitative criteria and should permit meaningful rebuttal. Second, ex ante obligations should be sufficiently precise to provide legal certainty while

[22] Business Standard, Govt to Bring Digital Competition Bill After Due Process: Harsh Malhotra (Mar. 16, 2025); MediaNama, Finance Committee Wants the Govt to Finalise Digital Competition Bill (Aug. 2026).

permitting proportionate exceptions where legitimate efficiencies or technological considerations justify differentiated treatment. Third, the relationship between ex ante obligations and the Competition Act should be expressly clarified so that the introduction of prospective regulation does not create unnecessary duplication or inconsistent remedies. Fourth, the regime should be subject to periodic review because digital markets can change more rapidly than the legislative categories used to regulate them.

A hybrid approach also preserves an important role for competition jurisprudence. Ex ante regulation can address recurring structural risks, but the Competition Act should remain available for conduct that falls outside predetermined obligations or raises novel theories of harm. This division of labour would allow India to retain the flexibility of effects-based enforcement while reducing the delay associated with recurring forms of digital exclusion.

The proposed ex ante turn should therefore be viewed as a question of regulatory calibration rather than regulatory replacement. The experience of the CCI demonstrates that Indian competition law is capable of responding to digital market power. The case for prospective regulation becomes stronger only where that flexibility proves systematically inadequate. The appropriate objective is consequently to identify the boundary between the two forms of intervention and to design institutions capable of moving across that boundary as market conditions evolve.

VI. COMPARATIVE ANTITRUST: INDIA, THE EUROPEAN UNION AND EMERGING DIGITAL-COMPETITION REGIMES

Comparative competition-law analysis frequently treats the European Union's Digital Markets Act (‘DMA’) as the principal reference point for digital-platform regulation.[23] This approach is understandable given the DMA's significance, but it can produce an overly linear account of regulatory development in which ex ante regulation appears as the inevitable endpoint of digital competition law. A more useful comparison asks why different jurisdictions have selected different institutional mechanisms for addressing platform power and whether those mechanisms remain appropriate in their respective economic and regulatory environments.

[23] See Anu Bradford, Digital Empires: The Global Battle to Regulate Technology (2023).

A. India and the European Union: Different Regulatory Starting Points

The European Union's DMA represents a deliberate shift towards ex ante regulation of designated gatekeepers. Its objective is to address practices considered capable of undermining contestability and fairness in core platform services without requiring the European Commission to establish an abuse of dominance in each individual case. The model therefore prioritises speed, predictability and prospective obligations, particularly where recurring conduct has been identified as presenting systemic risks.

India's existing framework begins from a different position. The CCI's authority is principally derived from the Competition Act, 2002, and digital-platform conduct has been incorporated into that framework through market-specific investigation and adjudication. The Indian model consequently places greater emphasis upon establishing the relationship between market power, conduct and competitive effects in each proceeding.

Neither approach should be treated as inherently superior. The DMA reduces some of the costs associated with delayed enforcement but introduces the possibility that broad prospective obligations may regulate conduct whose effects vary across markets. India's ex post model allows greater attention to market-specific circumstances but may suffer from enforcement delay, evidentiary complexity and the difficulty of restoring competition after an entrenched ecosystem has developed.

The comparison therefore supports the article's conception of calibrated enforcement. The choice between the two models should depend upon the characteristics of the harm being addressed rather than upon a general assumption that digital markets require one particular regulatory architecture.

B. Institutional Capacity as a Variable in Regulatory Design

Institutional capacity is particularly important to this comparison. Ex ante regulation does not eliminate the need for technical expertise; it changes the type of expertise required. A gatekeeper regime requires the regulator to designate enterprises, interpret and monitor prospective obligations, assess compliance, investigate circumvention and determine whether technological changes alter the application of the rules. Ex post enforcement, by contrast, requires intensive economic and factual analysis within individual proceedings.

The institutional burden is therefore substantial under both models, although differently distributed. India should not assume that adopting an ex ante framework will automatically reduce pressure on the CCI. If anything, a hybrid regime could increase the Commission's responsibilities by requiring it simultaneously to administer prospective obligations and conduct conventional abuse-of-dominance investigations.

This consideration strengthens the case for capacity-building before significant expansion of the CCI's mandate. Competition authorities require personnel capable of analysing algorithms, data practices, platform incentives, interoperability, cloud infrastructure and multi-sided markets. Institutional competence is not merely an administrative consideration; it affects the substantive accuracy of competition-law intervention.

C. India and the Global South: Beyond the Follower Narrative

India should also not be treated as a representative example of a homogeneous "Global South" regulatory model. The scale of the Indian digital economy, the presence of substantial domestic technology and telecommunications businesses and the importance of digital platforms to commerce and public-facing infrastructure distinguish India from many smaller emerging economies.[24]

At the same time, the Indian experience shares concerns that are particularly significant for emerging digital markets. Regulatory resources may be more constrained, alternative infrastructure may not be readily available, and intervention affecting a major platform may have consequences extending beyond conventional consumer welfare considerations. These factors do not justify weaker competition enforcement. They instead make the design and sequencing of intervention more consequential.

India's comparative position is therefore best understood as one of selective adaptation. The country can borrow analytical concepts from mature competition jurisdictions while modifying thresholds, institutional procedures and remedies to reflect domestic conditions. Such adaptation is not evidence of regulatory incompleteness. It is an ordinary feature of competition-law development in markets whose institutional structures differ from those of the

[24] Payal Arora, General Data Protection Regulation — A Global Standard? Privacy Futures, Digital Activism, and Surveillance Cultures in the Global South, 17 Surveillance & Soc'y 717 (2019).

jurisdictions from which legal models are borrowed.

D. What India Can Learn from the DMA

Three lessons from the European experience are particularly relevant to India.

First, prospective obligations can be valuable where certain exclusionary practices recur across multiple markets and are difficult to address through repeated infringement proceedings. Secondly, designation criteria must be sufficiently precise to provide predictability while allowing regulators to account for qualitative characteristics that quantitative thresholds cannot capture. Thirdly, ex ante regulation requires substantial institutional capacity for monitoring and enforcement; legislation alone does not create regulatory effectiveness.

There are, however, equally important lessons concerning what India should avoid. The mere existence of a successful foreign regulatory model does not establish that identical thresholds or obligations will generate equivalent outcomes in India. Differences in market structure, business models, regulatory capacity and digital infrastructure may alter both the competitive benefits and the costs of intervention.

The appropriate comparative lesson is therefore one of institutional fit. India's future digital competition framework should borrow where the underlying competitive problem is comparable, but depart where the economic or institutional conditions differ.

E. The Appropriate Benchmark for Indian Reform

The ultimate benchmark should not be whether Indian law converges formally with the DMA. The more meaningful question is whether India's regulatory framework can identify and remedy significant digital competition problems in a timely, proportionate and institutionally sustainable manner.

On this measure, neither pure ex post enforcement nor comprehensive ex ante regulation provides a complete answer. Ex post enforcement offers flexibility and case-specific accuracy; ex ante regulation offers speed and predictability for recurring structural risks. India's regulatory challenge is to combine these advantages while controlling their respective risks of under-enforcement and over-enforcement.

The comparative analysis therefore reinforces the article's central proposition: India should not regard the DMA as the destination of digital competition law. It should treat the European experience as one source of institutional evidence while developing a regulatory architecture responsive to Indian market conditions. The question is not whether India should become more like the European Union, but which regulatory tools are most capable of preserving contestability in India's own digital economy.

VII. TOWARD A COHERENT INDIAN FRAMEWORK FOR DIGITAL COMPETITION

The preceding analysis indicates that India's digital competition regime does not require a choice between preserving the existing Competition Act and adopting an ex ante framework. The more appropriate objective is to construct an institutional architecture in which the two approaches perform complementary functions. The following reforms are directed towards that objective.

A. Build Digital Competition Capacity Before Expanding the Mandate

The first requirement is institutional capacity. The CCI's digital-market cases increasingly involve economic questions concerning network effects, multi-sided markets, data accumulation, algorithms, interoperability and ecosystem leverage. These matters cannot be addressed effectively through conventional legal analysis alone.

The Commission should therefore strengthen dedicated technical capacity in digital economics and technology. This should include economists, data scientists, technologists and sector specialists capable of analysing platform architecture and data-driven business models. Such capacity should exist not only within the investigative process but also within the Commission's adjudicatory and remedial functions.[25]

Capacity-building should precede, rather than follow, any substantial expansion of the CCI's ex ante responsibilities. Otherwise, the introduction of prospective obligations may increase the volume of regulatory activity without increasing the institution's ability to evaluate compliance accurately. The problem would then become one of regulatory capacity rather than

[25] Standing Comm. on Fin., supra note 2.

statutory authority.

B. Develop a Structured Framework for Remedial Calibration

The second reform concerns remedies. Digital-platform cases frequently involve ecosystems upon which consumers and businesses depend. This creates a distinctive remedial problem: an intervention must address the source of competitive harm without unnecessarily disrupting legitimate services or creating unintended barriers to innovation.

The CCI should therefore develop published principles for remedial design. These principles should require consideration of the nature of the competitive harm, the mechanism through which foreclosure occurs, the availability of less restrictive remedies, likely effects on third parties and the feasibility of monitoring compliance. Behavioural remedies should contain measurable obligations wherever possible, together with mechanisms for review and modification.

The concept of infrastructural dependence developed in this article should form one element of that assessment. Dependence should not shield a dominant enterprise from intervention, but the practical consequences of disrupting an economically significant platform should be considered when determining the form, scope and sequencing of the remedy.

C. Strengthen Transparency in Settlement and Commitment Proceedings

The introduction of settlement and commitment mechanisms creates an opportunity to improve enforcement efficiency, particularly in rapidly evolving digital markets. Their legitimacy, however, depends upon transparency and consistency.

The CCI should develop publicly accessible criteria for assessing proposed commitments and settlements. Such criteria should address the relationship between the proposed remedy and the theory of harm, the duration and monitoring of obligations, the interests of affected third parties and the risk that the proposed remedy may merely alter the form rather than eliminate the exclusionary conduct.

Third-party participation should also be structured so that informants and affected market participants have a meaningful opportunity to raise objections without converting every settlement into a full infringement proceeding. A transparent record of the Commission's reasoning would improve both accountability and the development of guidance for future cases.

The objective should not be to discourage settlement. On the contrary, settlement can be an important component of calibrated enforcement where rapid behavioural correction is more valuable than prolonged litigation. The concern is instead to ensure that procedural efficiency does not come at the expense of remedial adequacy or doctrinal clarity.

D. Create a Clear Relationship Between Ex Ante and Ex Post Enforcement

If India ultimately adopts an ex ante digital competition statute, the legislation should expressly define its relationship with the Competition Act, 2002. The existence of a prospective obligation should not automatically exclude the application of conventional competition law to conduct producing additional or different competitive harm.

At the same time, duplication should be avoided. An enterprise should not face overlapping proceedings for the same conduct without a clear explanation of the distinct legal interest being protected by each regime. The legislation should therefore identify circumstances in which the ex ante framework has priority, circumstances in which the Competition Act continues to apply independently, and mechanisms for coordination between proceedings. [26]

This distinction is especially important where a platform's conduct simultaneously engages competition, data-protection, consumer-protection and sectoral regulation. Regulatory coordination should prevent conflicting obligations while preserving the separate objectives of each legal regime.

E. Introduce Meaningful Rebuttal and Periodic Review of Designation

An ex ante designation regime should not treat quantitative thresholds as conclusive evidence of systemic significance. The designation process should incorporate a meaningful opportunity for an enterprise to demonstrate that the statutory assumptions do not accurately describe its competitive position or the characteristics of the relevant service.

A rebuttal mechanism should not become a means of indefinitely avoiding designation. Its purpose should instead be to correct false positives and ensure that the regulatory burden

[26] Standing Comm. on Fin., supra note 2; see also Regulation (EU) 2022/1925, art. 3(5).

corresponds to the competitive risks actually presented by the enterprise.

Designation should also be periodically reviewable. Digital markets can change rapidly, and an enterprise that satisfies the relevant conditions at one point may subsequently lose its systemic significance. Conversely, a rapidly growing platform may acquire strategic importance after the initial designation process. Periodic review would therefore improve proportionality and reduce the risk of regulatory categories becoming detached from market realities.

F. Develop a Graduated Model of Intervention

India should consider a graduated model in which the intensity of regulatory intervention corresponds to the nature of the competitive risk. At the first level, ordinary competition-law enforcement would continue to address conduct requiring market-specific effects analysis. At the second level, systemically significant platforms could become subject to targeted prospective obligations concerning recurring forms of conduct. At the third level, persistent or particularly serious structural concerns could justify more intrusive remedies, subject to statutory safeguards and judicial review.

Such graduation would avoid the false binary between ordinary antitrust enforcement and comprehensive gatekeeper regulation. It would also permit the regulatory framework to respond proportionately to differences between platforms and services.

Finally, institutional reform should preserve a meaningful role for appellate review. The development of digital competition law requires authoritative interpretation of concepts such as ecosystem leverage, self-preferencing, non-price competition and data-driven market power. Excessive reliance upon negotiated resolution could reduce the opportunities through which such principles are clarified.

The objective should therefore be a balance between enforcement efficiency and doctrinal development. Cases involving routine or well-understood conduct may be particularly suitable for settlement or commitment, while cases involving novel legal questions should ordinarily generate reasoned decisions capable of guiding future enforcement.

Taken together, these reforms support a model of digital competition regulation that is flexible without being discretionary, prospective without being over-inclusive, and technologically informed without abandoning conventional competition-law discipline. India's objective should not be to construct a separate legal universe for Big Tech, but to strengthen the institutional capacity of competition law to address the distinctive mechanisms through which digital market power is acquired, maintained and exercised.

VIII. CONCLUSION

India's response to Big Tech cannot be understood through the simple opposition between an allegedly outdated ex post competition regime and an inevitably superior ex ante model. The analysis in this article demonstrates that Indian competition law has already developed significant capacity to address digital-platform power. Through its treatment of search practices, mobile ecosystems, marketplace intermediation, data-driven conduct and platform dependency, the CCI has adapted conventional concepts of market definition, dominance and abuse to economic conditions that were not contemplated when the Competition Act, 2002 was enacted.

This development is significant for two reasons. First, it demonstrates that digital markets do not require competition law to abandon its traditional doctrinal foundations. Concepts such as dominance, foreclosure, vertical leverage and abuse remain capable of capturing important forms of platform conduct when interpreted in light of network effects, data advantages, ecosystem integration and non-price competition. Secondly, the jurisprudence reveals the limits of an entirely case-specific approach. Where competitive harm is recurring, difficult to detect before foreclosure occurs, or embedded within the structure of an ecosystem, ex post enforcement may become increasingly costly and potentially too slow to restore contestability.

The proposed move towards ex ante regulation should therefore be understood as a response to these limitations rather than as a repudiation of existing competition law. A prospective framework can provide particular advantages where certain forms of conduct repeatedly generate competitive risks and where requiring the authority to establish a complete abuse-of-dominance case in every instance creates unacceptable delay. But ex ante regulation also creates its own risks, including over-inclusive designation, regulatory error, compliance costs and the possibility that prospective obligations may constrain conduct that produces legitimate efficiencies.

The comparative analysis further demonstrates why the European Union's Digital Markets Act should not be treated as the inevitable endpoint of Indian competition-law development. The DMA provides valuable evidence concerning the advantages and challenges of gatekeeper regulation, but its institutional design emerged from a different legal and economic environment. India must therefore adapt comparative experience to its own market structure, institutional capacity and degree of infrastructural dependence. Regulatory convergence may be desirable in some areas, but formal similarity should not be mistaken for regulatory effectiveness.

The central proposition of this article is accordingly one of calibrated enforcement. India should preserve the flexibility of ex post competition law for novel, market-specific and effects-dependent conduct while developing targeted ex ante obligations where recurring structural risks make case-by-case intervention inadequate. The distinction between the two regimes should not be rigid. It should instead be determined by the nature of the competitive harm, the durability of the market power involved, the feasibility of timely ex post intervention and the availability of proportionate remedies.

This approach also gives the CCI's existing jurisprudence a significance extending beyond the present legislative debate. The cases examined in this article are not merely evidence that Indian competition law has managed to regulate Big Tech in the absence of a dedicated statute. They provide the doctrinal foundation from which any future ex ante framework must develop. Questions concerning ecosystem leverage, non-price competition, data-driven market power, platform dependency and remedial proportionality will remain relevant even after the introduction of prospective obligations.

India consequently does not face a choice between “old” competition law and “new” digital regulation. The more productive path is to construct a system in which both perform distinct but complementary functions. Ex post enforcement should remain the principal mechanism for conduct requiring contextual economic assessment; ex ante regulation should address clearly identified recurring structural risks; and the boundary between the two should remain capable of adjustment as digital markets evolve. Such a framework would allow India to move beyond the binary question of whether it should copy the DMA and towards the more consequential question of what an effective Indian model of digital competition law should look like.