
BALANCING INNOVATION AND REGULATION: A CRITICAL ASSESSMENT OF INDIA'S DRAFT DIGITAL COMPETITION BILL

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ABSTRACT

India's proposed Digital Competition Bill (DCB) represents a paradigmatic shift in the nation's competition law jurisprudence, transitioning from a reactive, ex-post enforcement model to a preventive, ex-ante regulatory architecture. This article critically examines the structural rationale for such a framework, the concomitant risks of regulatory overreach, the calibrated recommendations of the Parliamentary Standing Committee on Finance, and the broader policy implications for India's digital economy. It concludes that while robust gatekeeper regulation is indispensable, its design must remain flexible, empirically grounded, and sensitive to the distinct capital constraints of domestic technology enterprises.

Keywords: Digital Competition Bill, Ex-Ante Regulation, Competition Commission of India, Systemically Significant Digital Enterprises, Gatekeeper Regulation, Digital Markets Act.

I. Introduction: The Regulatory Imperative in India's Digital Economy

India's digital economy stands at a consequential regulatory crossroads. The Report of the Parliamentary Standing Committee on Finance on the 'Evolving Role of the Competition Commission of India' (hereinafter "the Committee Report") signals a fundamental shift in legislative philosophy: a deliberate transition away from the traditional, reactive ex-post enforcement paradigm embedded in the Competition Act, 2002, toward a proactive, preventive ex-ante regulatory framework.

This legislative initiative, operationalised through the proposed Digital Competition Bill (DCB), seeks to address structural market distortions—including data accumulation by dominant platforms, self-preferencing practices, and vertical integration across digital value chains—before such conduct results in the irreversible tipping of markets in favour of entrenched incumbents.

However, as India actively positions itself as a global centre of excellence for Artificial Intelligence (AI) and technology entrepreneurship, legislators confront a layered policy dilemma: how to construct a rigorous ex-ante enforcement mechanism against anti-competitive conduct without simultaneously constraining the corporate innovation and capital formation that constitute the bedrock of India's technology-led economic growth strategy. This article undertakes a critical evaluation of that tension.

II. The Structural Case for Ex-Ante Regulation: Addressing Digital Infrastructure Monopolies

The primary normative and economic justification for an ex-ante regulatory architecture derives from the distinctive structural characteristics of the contemporary digital supply chain, particularly within the generative AI ecosystem. The global digital economy exhibits pronounced consolidation at its foundational infrastructure layers, a phenomenon that carries significant implications for market contestability and competitive dynamics.

A. Hardware and Cloud Concentration

At the computational layer, the graphics processing unit (GPU) market is dominated by a single enterprise, which by virtue of its proprietary software ecosystem, effectively forecloses multi-homing by AI developers and entrenches path-dependent lock-in. At the infrastructure

layer, a small cohort of global hyperscale cloud providers exercises effective oligopolistic control over cloud compute capacity, creating structural barriers to entry for prospective market participants.

These conditions of concentration generate pronounced bargaining asymmetries throughout the digital value chain. Empirical data indicates that approximately two-thirds of domestic technology startups are constrained to operate exclusively at the consumer-facing application layer, while only a marginal fraction commands the capital resources or proprietary infrastructure necessary to develop and deploy foundational AI models.

B. The Inadequacy of Ex-Post Remedies

Because emerging startups lack independent access to computational infrastructure, they are compelled to enter into rigid vertical supply arrangements with dominant infrastructure providers, often on non-negotiable terms. Conventional antitrust doctrine, predicated on the ex-post identification and prosecution of abusive conduct, is structurally ill-suited to address such arrangements. Investigations frequently extend across multiple years, during which the relevant market may have irrevocably tipped in favour of the incumbent, rendering any subsequent remedy economically ineffectual. An ex-ante framework is therefore not merely desirable but necessary to preserve the open architecture of digital markets and safeguard the conditions for meaningful competition.

III. The Counter-Proposition: Regulatory Overreach and Compliance Burden

Notwithstanding the compelling structural rationale for ex-ante intervention, industry associations and corporate legal practitioners have advanced substantive objections to the current formulation of the DCB. Their central contention is that a rigid, threshold-based designation regime may operate as a blunt regulatory instrument, inadvertently capturing domestic enterprises that pose no meaningful competitive threat.

Under the current draft, enterprises may be designated as Systemically Significant Digital Enterprises (SSDEs) upon satisfying certain quantitative financial and user-base thresholds:

Table 1: SSDE Designation Thresholds under the Draft Digital Competition Bill

Financial Turnover Threshold	Core User Base Threshold
Global turnover exceeding ₹ 30,000 Cr OR India turnover exceeding ₹ 4,000 Cr	1 Crore (10 Million) End-Users OR 10,000 Business Users

Source: Draft Digital Competition Bill, Ministry of Corporate Affairs, Government of India.

Critics contend that, given the scale and velocity of growth in the Indian technology ecosystem, these quantitative thresholds are insufficiently calibrated to distinguish between genuinely dominant global gatekeepers and rapidly scaling domestic enterprises. The risk of inadvertent regulatory capture of the latter category is, accordingly, non-trivial.

Furthermore, unlike their well-capitalised global counterparts, domestic technology enterprises typically operate within capital-constrained environments where R&D expenditure competes directly with operational requirements. Imposing prescriptive upfront compliance obligations—including categorical restrictions on service bundling, cross-utilisation of data across business verticals, and interoperability mandates—risks diverting scarce capital from product development and innovation into regulatory compliance infrastructure. The consequent effect may be a material deceleration in domestic technology deployment and an erosion of India’s competitive advantage in the global AI development race.

IV. Reconciling the Competing Imperatives: The Standing Committee’s Calibrated Approach

Cognisant of the tensions outlined above, the Parliamentary Standing Committee on Finance has recommended a series of structural refinements designed to ensure that the DCB functions as a precision regulatory instrument rather than an instrument of blunt enforcement. The Committee’s recommendations may be distilled into three principal themes.

A. Recalibration of Designation Thresholds

The Committee has explicitly advised the Ministry of Corporate Affairs to revisit and revise the quantitative criteria governing SSDE designation. The objective of such revision is

to ensure that the designation framework is sufficiently granular to capture entities exercising genuine gatekeeper power over digital ecosystems, while simultaneously excluding fast-growing domestic enterprises that have not yet attained the market significance necessary to produce the structural harms that the legislation seeks to address.

B. Introduction of a Formal Rebuttal Mechanism

In recognition of the due process and regulatory certainty concerns articulated by industry stakeholders, the Committee has recommended the introduction of a formal statutory mechanism enabling enterprises to contest their SSDE designation under demonstrably exceptional circumstances. Such a rebuttal procedure would provide affected entities with a legally cognisable pathway to demonstrate the absence of any intent or capacity to distort competitive market conditions, thereby introducing an element of proportionality into the regulatory architecture.

C. Expansion of Consumer Welfare Parameters

The Committee's report further acknowledges a doctrinal limitation of conventional competition law analysis: in digital markets, significant consumer harm frequently materialises through non-price vectors, including the erosion of data privacy, degradation of service quality, and restriction of consumer choice, rather than through conventional price effects. Accordingly, the Committee has recommended that the Competition Commission of India (CCI) formally integrate these non-price parameters into its consumer welfare assessment framework, alongside traditional metrics of price and output.

V. Conclusion: Toward a Calibrated and Contextually Responsive Framework

The foregoing analysis demonstrates that India's legislative response to the challenges of digital market regulation cannot be reduced to the uncritical transplantation of foreign regulatory models. While the European Union's Digital Markets Act (DMA) offers instructive precedent, its design—calibrated for a mature, multi-jurisdictional regulatory environment with distinct market structures—cannot be transposed wholesale into the Indian context without substantial adaptation.

India would derive greater benefit from examining more flexible regulatory architectures, such as Germany's qualitative designation framework for enterprises of

“paramount cross-market significance” under the Tenth Amendment to the Act Against Restraints of Competition (GWB), or the United Kingdom’s targeted, conduct-based regulatory codes administered by the Digital Markets Unit (DMU) of the Competition and Markets Authority. These frameworks share a common commitment to regulatory proportionality and contextual specificity that the Indian legislative exercise would do well to emulate.

Beyond legislative design, the efficacy of the DCB will ultimately depend upon the institutional capacity of the CCI to discharge its enhanced mandate. The Commission must continue to invest systematically in the technical expertise of its newly constituted Digital Markets Division, equipping it with the analytical capabilities necessary to evaluate the complex competitive dynamics of algorithmic markets, data-sharing arrangements, AI-enabled foreclosure strategies, and cloud infrastructure dependencies.

In summation, the Digital Competition Bill must be conceived not as an instrument for penalising commercial scale or constraining legitimate corporate growth, but as a carefully calibrated mechanism for preserving the structural openness and competitive integrity of India’s digital markets. Only such a framework will ensure that the architecture of Indian innovation remains accessible, contestable, and fair for domestic technology enterprises of all scales—from nascent startups to established unicorns—thereby securing the conditions for sustainable, inclusive, and competitively vibrant digital economic growth.

References and Select Bibliography

1. Ministry of Corporate Affairs, Government of India, 'Draft Digital Competition Bill' (2024).
2. Parliamentary Standing Committee on Finance, 'Report on the Evolving Role of the Competition Commission of India' (Thirty-Third Report, 2023).
3. Competition Act, 2002, No. 12 of 2003 (India).
4. Regulation (EU) 2022/1925 of the European Parliament and of the Council (Digital Markets Act).
5. Act Against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen), Tenth Amendment (Germany, 2021).
6. Competition and Markets Authority (UK), 'Digital Markets, Competition and Consumers Act 2024'.
7. Competition Commission of India, 'Market Study on the Telecom Sector in India' (2021).