
RESHAPING COMPETITION LAW IN THE DIGITAL AGE: GLOBAL AND INDIAN APPROACH

Vidhi Dobhal, Christ (deemed to be) University, Lavasa, Pune, Maharashtra, India.

Dr. Aman Rab, Designated Partner, Rab & Rab Associates, Dehradun, Uttarakhand, India.

ABSTRACT

The paper explores the intersection of evolution of competition law with digital economy in lines with the growing digital era. Within the spheres of consumer welfare, the traditional antitrust regulations are focused on regulation of price-fixing and monopolistic activities by the enterprises on the physical commodities but with the rapidly expanding digital market which is characterized by data-driven business models, the traditional metrics poses a significant challenge. The paper underscores the importance of having a robust regulatory framework, which is two fold, it curbs anti-competitive activities and concurrently ensures fair competition which upholds consumer welfare and encourage creation in digital environment.

To address these challenges, several structures have been brought in, globally. The European Union's Digital Markets Act, 2022¹ which shows a significant shift from ex-post regulations to ex-ante regulations and prohibition against self-preferencing on designated gatekeepers which are the online trading platforms. Drawing inspiration from the EU, India has proposed its Draft Digital Competition Bill, 2024 which is tailored for the digital market and is closely aligned with the Digital Markets Act, 2022 which includes classification of SSDE (Systematically Significant Digital Enterprises) and ex-ante regulation for facilitating prevention of anti-competitive behaviour by digital enterprises. This paper also gives an overview of the regulatory frameworks used globally by analyzing its key features and effectiveness and deliberates on broader implications for global anti-trust laws in the digital age.

¹ Digital Markets Act, 2022, No. 2022/1925, Acts of Parliament, 2022.

INTRODUCTION

The current economic landscape has witnessed a profound transformation, wherein online platforms have taken a central stage in economic activity and societal interaction. India's digital economy has emerged as a pivotal contributor to national economic growth accounting for 11.74 percent of GDP which is approximately INR 31.64 lakh crore in 2022-2023.² The antitrust laws traditionally have their origins in the industrial age, when economic power was concentrated in tangible monopolies such as railroads, oil conglomerates, and manufacturing cartels.³ The Antitrust laws were brought in the year 2002 with intention to combat anti-competitive practices, monopolistic activities and to maintain consumer welfare.⁴ As the economy shift towards digital era, the digital economy of India has become a significant contributor to the overall GDP growth , which has also led to formulation of legislation to prevent big tech giants from breaching competition laws or engaging in anti-competitive practices, also that the rate of innovation is at par with that of regulation. ⁵

Even the early U.S. legislation like the Sherman Act,1890, the Clayton Act,1914, aimed to prevent price-fixing, predatory mergers, and misuse of market power.⁶ These laws served the industrial economy well by protecting consumers from exploitation and ensuring that there were no barriers on entry of small enterprises or start-ups. However, the poses novel challenges that prevailing legal systems are not designed to confront. Tech platforms such as Google, Amazon, Meta (formerly Facebook), and Apple have come to exercise unprecedented control over data, markets, and innovation clusters.⁷ Unlike traditional monopolies, these platforms do not necessarily harm consumers through high prices, instead customers gain access to wide range of services for free. The source of concern lies in non-monetary harms which includes privacy violations, narrowed choice, algorithmic manipulation and foreclosure of digital

² Santosh Kumar, Sarla Meena, Kritika Rane,*Future Ready:India's Digital Economy to Contribute one-Fifth of National Income by 2029-30*, PIB Delhi,(2025),<https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=2097125>.(Last Visited August 5, 2025)

³ Ishani Rao,Dr. Prem Kumar Gautam,*The Economic Impact of Antitrust Laws in Digital age*, Vol.7 Iss.2, IJLPSR,117,117-124, (2025).

⁴ Ministry of Corporate Affairs,*Report of Committee in Digital Competition Law*,<https://prsindia.org/files/parliamentary-announcement/2024-04-15/CDCL-Report-20240312.pdf>,(Last visited Aug.7,2025).

⁵ Irfan Rashid,*Draft Digital Competition Bill 2024: A Case Against the Blanket Ban on Self-Preferencing*, NUALS LJ, (2025).

⁶ Ibid

⁷ Ibid.

markets.

The need for regulation of antitrust law in the digital markets is no longer just a legal imperative because unchecked platform dominance risks lingers with the growth of innovation which certainly suppresses smaller competitors, and undermines consumer welfare. In the absence of effective regulation, dominant digital platforms can entrench their position through network effects, exploit asymmetries in data access, and engage in exclusionary practices like self-preferencing which creates dominance by pursuing strategy in their own favour and building merger and acquisitions which reduces competition in the market.⁸

A key element of modern antitrust enforcement is recognizing that market power in digital ecosystems does not always manifest in high prices. Instead, the principle of consumer welfare is breached through diminished privacy, degraded service quality, or monopolistic control of innovation.⁹ Various studies show that digital platforms pursuing strategies, such as Google's pre-installation of its apps on Android devices or Amazon promoting its private-label product does yield benefits but also reduces market competition.¹⁰ The United Nations Conference on Trade and Development (UNCTAD) released its Digital Economy Report ,2021, wherein it was stated that most of the wealth from the data and digital market lies in the hand of the companies situated in the Global North and people in developing countries generate huge amounts of data but instead of benefiting from it, they are considered as passive suppliers, this imbalance widens the gap between rich and poor nations and holds back fair opportunities for fair growth.¹¹ Therefore, the antitrust laws must be seen not only through the lens of market fairness but also as a tool of developmental justice. Moreover, digital markets tend to become "winner-takes-most", as more people use the platform, the more valuable it becomes and the digital market often ends up being dominated by few big players.¹² Without early and preventive regulation, these markets can become irreversible monopolies.

Countries like India are moving towards *ex-ante* regulation is precisely a response to this realization, mirroring similar shifts in global legal frameworks like the European Union's Digital Markets Act ,2022. Other jurisdictions, including the UK's Digital Markets,

⁸ Ayushmaan Chouksey, *A step towards Digital Competition Law in India*, ILJ,9,1-11,(2025).

⁹ Shivam Chopra, Manya Sethi, *The Effects of Digital Marketplaces on Antitrust Enforcement: A Comparative*, SSRN,1-12,(2025).

¹⁰ Ishani Rao, *supra* note 10, at 119.

¹¹ *Digital Economy Report 2021*, UNCTAD, https://unctad.org/system/files/official-document/der2021_en.pdf, Last visited Aug. 8, 2025).

¹² ISHANI RAO, *supra* note, at 5.

Competition and Consumers Bill and legislative initiatives in the U.S. and Australia also reflect this global trend. However, the European Union and India present instructive contrasts: the former has a mature enforcement apparatus, while India's market is expanding rapidly, with distinct local concerns about innovation, market entry, and global platform dominance.¹³

IMPLICATIONS OF ANTITRUST LAWS IN THE DIGITAL ECOSYSTEMS

For growth of innovation and securing fair level playing field in the digital age, antitrust law plays the role of pivotal bridge for consumer welfare. It combats anti-competitive practices like self-preferencing.

*“Self-preferencing is an act of giving preference or priority to their own products or services over other competing products and is usually done in their own ecosystems or platforms”.*¹⁴ It often shows up in things like search results, product recommendation which displays the company's product on the top. Several companies and enterprises engage in these practices by prioritizing one's own product ,for an example, Apple effectively compels the iOS users to download apps exclusively from the App-store.¹⁵ Similarly , Amazon which initially served as a marketplace for third-party retailers, now prominently promotes its own brand *“AmazonBasics”*. Even quick commerce and food delivery apps like Zepto and Zomato have adopted this approach by giving preferential treatment to their own in-house brands for the purpose of boosting their private label sales. This dominance often creates substantial barriers and makes it challenging to compete for the smaller start-ups or firms which results in significant market concentration and reduces competition In 2018, European Commission imposed a 4.3 Billion Euros fine on Google, in accordance with the 2006 Guidelines on fine, which was calculated according to their revenue from search advertising services for exploiting its market position by compelling android device manufacturers to pre-install google apps.¹⁶

Oftentimes, self-preferencing actually works in favour of both customers and competitors when pursued in the right way.¹⁷ It can make the user experience smoother as seen with Google's

¹³ Anush Ganesh, Mohit Yadav, Gaurav Pathak, *The Indian draft Digital Competition Bill: A critical Perspective*, ILJ, Vol. 9, No. 2, 195, 193-207 (2025).

¹⁴ *supra* note, at 10.

¹⁵ TECHCRUNCH, <https://techcrunch.com/2015/11/16/apple-appears-to-be-promoting-its-own-apps-in-the-iphone-app-stores-top-charts/>, (Last visited August 7, 2025).

¹⁶ European Commission, https://ec.europa.eu/commission/presscorner/detail/en/ip_18_4581, (Last visited August 6, 2025).

¹⁷ AYUSHMAAN, *Supra* note 6.

integration with Google Maps. By improving efficiency, platforms can reinvest in product development and explore innovative concepts which can encourage other market players to adopt, indirectly benefiting the whole market and ultimately, giving the consumers more choice.

Unlike traditional markets, these are more versatile in ways that it essentially question the tools and concept of conventional competition law. As these digital markets exhibit data-driven economies, most of the tech giants with access to large volumes of user data improve their algorithms to deliver more targeted consumers and certainly enhance user experience and attract more users. This basically acts as a barrier to entry for rivals who cannot match the same data sets.¹⁸ Also, the rise of algorithmic pricing strategy and usage of artificial intelligence poses various enforcement challenges.¹⁹ Algorithms can adjust prices in real-times based on market conditions, consumer behaviour and competitor pricing.²⁰ Even though this type of dynamic pricing strategy can improve consumer satisfaction, it also brings in tacit collusion. For example, Uber uses a surge-pricing algorithm and was subjected to a lawsuit alleging it coordinated pricing among drivers and increased prices during rainy weather.²¹

Lastly, various obstacles for emerging players in the digital market are increased by brand loyalty, switching cost, integration into multiple markets. Even if new entrants are present, dominant platforms acquire them anticipating the threat and these are called “killer acquisitions.”²² All of these effects cumulatively makes the enforcement slower and reactive by working in the favour of one or a few dominant players.

GLOBAL GOVERNANCE OF ONLINE HUBS

The rapid hegemony among a few dominant technology giants has prompted a wave of legislative and regulatory innovation globally. Jurisdictions have started to shift from ex-post to ex ante framework, which imposes obligations on firms before anti-competitive harm occurs. The most influential example of such an approach has been implemented in the European Union by the “*Digital Markets Act, 2022*” which came in November, 2022. It introduced a

¹⁸ Harman Singh Sandhu, Rohan Chopra, *Abuse of Dominance in India*, SAM-Lexology, (August 12, 2025, 3:30PM), <https://www.lexology.com/library/detail.aspx?g=00e0f87a-ff41-4ba2-a6ff-5a026e7793b0>.

¹⁹ Cary Coglianese, Alicia Lai, *Antitrust by Algorithm*, SCA, Vol.2,3,1-22,(2022).

²⁰ *Ibid.*

²¹ *Uber India Private Ltd v. CCI AIRONLINE* (2019) SC 1110.

²² ISHANI, *supra* note 6, at 118.

concept of designating digital platforms as “gatekeepers” defined as large digital platforms providing “core platform services” like search engines, social networking and e-commerce platforms.²³ Existing designated platforms are Apple, Google, Microsoft and Amazon. Once assigned as a gatekeeper platform, they are obligated to comply with “ex-ante obligations” and restrictions which are designed to promote an equitable market. These majorly include self-referencing, prohibition on accessing personal data without consent, and obligations to ensure interoperability with third-party services.²⁴ The act is operated through combined expertise of the Directorate-General for competition and the Directorate-General for Communications Networks, Content and Technology, with their technical knowledge for an effective implementation and enforcement of the antitrust law.²⁵

The United Kingdom has taken an analogous approach with its Digital Markets Competition and Consumer Bill, 2023.²⁶ This bill designates firms as “Strategic Market Status” and imposes a set of code of conduct which are specific to each firm's market position and behaviour. It takes on a dual approach with the aim to balance the need for proactive regulation and recognizes the fact that one-size-fits-all rules may be overly rigid in dynamic digital environments. It basically strengthens consumer protection and reflects a balanced co-existence of antitrust regulations and consumer protection in digital context.

The United States on the other hand, has remained anchored in the existing antitrust statutes like Sherman Act, 1890 and Clayton Act, 1914 and Federal Trade Commission Act, 1914 but there has been an increase in enforcement action against big technology giants who are engaged in anti-competitive activities, one of the leading action was taken against Google for monopolizing the arena of online search engines and against Meta for acquiring its competitor like Instagram and WhatsApp.²⁷ Numerous bills in the Congress are inclined towards ex-ante regulatory framework but none have been considered, which makes the country more reliant on ex-post enforcement.

²³ Amber Darr, Madhvi Singh, *Lessons from EU and UK for Strengthening India's Digital Competition Regime*, PROMARKET ART, (August 5, 2025, 17:59), <https://www.promarket.org/2025/06/24/lessons-from-the-eu-and-uk-for-strengthening-indias-digital-competition-regime/>.

²⁴ Filippo Lancieri & Patricia Morita Sakowski, *Competition in Digital Markets: A Review of Expert Reports*, 26 Stan. J.L. Bus. & Fin. 65 (2021).

²⁵ UNCTAD Secretariat, *Enforcing competition law in digital markets and ecosystems: Policy challenges and options*, UNCTAD, (August 10, 2025), https://unctad.org/system/files/official-document/ciclpd74_en.pdf.

²⁶ Digital Markets and Competition and Consumers Bill, 2023, Bill 294, Acts of Parliament, 2023 (UK).

²⁷ AYUSHMAAN, *supra* note 6, at 7.

POSITION IN INDIA

India is at an inflection point in its experience with regulating the digital market. Projections indicate that this sector will expand at nearly twice the rate of the overall economy, with its share expected to reach close to one-fifth of national income by 2029-30.²⁸ Although the Competition Act, 2002 has been utilized to combat anti-competitive activities in the digital economy like the Competition Commission of India's ruling in 2021 wherein Google had attempted to exploit market.²⁹ After recognizing these slow paced interventions, a Committee on Digital Competition Law (CDCL) was formed by the Ministry of Corporate Affairs constituted in February 2023 to assess the necessity to change the regulatory regime and it undertook a comparative analysis of traditional and digital markets aiming to outline threshold for regulatory intervention and used international frameworks and Finance Standing Committee's Report on "*Anti-competitive practices by Big tech companies*"³⁰. This report basically criticized the Competition Act's *ex-post* framework wherein dominant players employ strategies to stifle market competition and make their position more concrete. In March, 2024 a report was consolidated by the CCDL committee wherein after examination it was found that *ex-post* enforcement is inefficient to tackle the speed and scale of the impair in digital markets.³¹

The "*Draft Digital Competition Bill, 2024*" is modeled on the EU's Digital Markets Act, 2022 which imposes obligations on SSDEs similar to EU's gatekeepers, which expressly prohibit self-preferencing of one's own commodities and services in rankings or search results, refraining from anti-competitive practices.³² The draft bill fundamentally regulates these practices keeping in view the principles of contestability, fairness and transparency and with an objective to uphold innovation, promote competition and to safeguard that consumers are well protected in India. It acknowledges the fluid nature of digital markets as it offers flexibility to add more core digital services to suit the evolving nature of market dynamics.³³ "*It majorly targets social networking, search engines, video sharing platforms, inter-personal*

²⁸ SANTOSH, *Supra* note, at 4.

²⁹ Google LLC & Anr. V. Competition Commission of India, (2023) SCC OnLine NCLAT 147.

³⁰ PRS LEGISLATIVE RESEARCH, <https://prsindia.org/policy/report-summaries/anti-competitive-practices-by-big-tech-companies>, (Aug, 4, 2025).

³¹ Vishwas Fatehpuria, *India's Shift Towards Proactive Competition Law in the Digital Age*, MANUPATRA, (August 9, 2025, 12.30PM), <https://www.manupatracademy.com/legalpost/digital-competition-law>.

³² Anush Ganesh, *supra* note 11, at 194.

³³ *supra* note, at 32.

communication, advertising services, cloud services.”³⁴

It recommended the Draft Bill to impose *ex-ante* obligations on tech giants offering “core digital services” are named to be “*Systemically Significant Digital Enterprises*” (SSDE). Also, the classification for the same is on the grounds of quantitative thresholds of revenue, market capitalization, and user base. In order to qualify as an SSDE, a company needs to meet requirements of financial and user base tests. The financial test requires an annual turnover in India of at least 440 million and a global turnover of at least USD 30 Billion, and the user-base test requires at least 10 million end users or 10,000 business users in India.³⁵ In comparison, the *Digital Markets Act, 2022* in the European Unions has set a higher threshold of 7.5 Billion annual turnover or a market value of 75 billion and at least 45 million active end users in the EU.³⁶ Both the frameworks allow regulators to designate a company as an “SSDE” or gatekeeper even if they do not fall under the ambit of the required threshold, as long as it still holds significant market presence. In India, this task of regulating lies upon the CCI under Section 3(3) of the Bill. Once a firm or start-up is registered as a SSDE, it must comply with a set of *ex-ante* rules which are designed to ensure fair competition and transparency and puts a restriction on anti-steering practices which prevents users from finding better alternatives elsewhere, limiting the access of personal data and avoiding users to easily change default settings.³⁷ For enforcement, the CCI is given extensive powers to issue interim orders, investigate violations, accept settlements and impose penalties up to 10% of a company’s global turnover for non-compliance. Acknowledging the complexity of digital market regulation, the report recommends creating a specialized bench within the National Competition Law Appellate Tribunal (NCLAT) to handle appeals against CCI orders quickly and effectively.

In recent years, major tech giants have been alleged to employ anti-competitive tactics to edge out their rivals and increase consumer prices high. Common strategies include price discrimination, tying agreements with certain products or services and entering into exclusive arrangements that block fair competition. Uber has been prominently noticed for using such practices because it automatically re-routes riders and charges them more.³⁸ In the Apex Court

³⁴ *supra* note, at 32.

³⁵ Draft Digital Competition Bill, 2024, <https://www.medianama.com/wp-content/uploads/2024/03/DRAFT-DIGITAL-COMPETITION-BILL-2024.pdf> (Last visited Aug. 5, 2025)

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ Cary Coglianese, *supra* note 16 at, 5.

it was held that Uber did it to maximize earnings and discouraged riders from changing directions in order to charge more, it was also noted by the court that this strategy made it harder for customers to compare prices or choose alternatives.³⁹ CCI has initiated numerous measures on various major players in the digital environment. In 2021, Amazon was fined Rs.202 crore for market distortion and playing a dominant role in online retailing as it was found abusing its market power by pushing sellers into arrangements and leveraged its access to data in ways which discriminated against other sellers.⁴⁰ In 2022, Google faced a penalty of Rs 1337 crore for dominance in online search engines as it was exercising discriminatory approach to its own products and services in search results which limited the access for other alternatives for the consumers.⁴¹

IMPACT ON INNOVATION AND IMPLEMENTATION CHALLENGES

The most discussed controversies are around the “*Draft Digital Competition Bill, 2024*” is its probable influence on innovation and investment in India’s growing digital economy.⁴² Even in the European Union, similar concerns have been raised where ex-ante obligations are applied as a preventive measure to prevent anti-competitive behaviour to keep markets fair but it also makes an unintentional bottleneck for innovation. This is particularly relevant for a country like India where many homegrown digital businesses are still augmenting and often rely on large platforms for user base and market access.⁴³ In a scenario where a lot of restrictions are placed their willingness to invest in creating new services or expanding in the Indian market will significantly reduce and which will drop down their potential and pace for technological advancement.

It has also been asserted in various studies that a blanket ban on self-preferencing could ignore the potential gain of a concept called “competitive differentiation” wherein companies create unique value through service or product quality, efficiency, and integration.⁴⁴ A major example for this is Amazon’s Fulfillment by Amazon (FBA) program was not just designed to serve itself but it also helps third party sellers store, pack and deliver orders more effectively through

³⁹ *supra* note, at 17.

⁴⁰ Amazon.com NV Investment Holdings LLC v. CCI, 2022 SCC OnLine NCLAT 238.

⁴¹ AMBER, *supra* note, at 25.

⁴² Varun Singh, *Competition in peril? Challenges faced by the CCI*, Bar & bench, (July 30, 2025), <https://www.barandbench.com/columns/competition-in-peril-challenges-faced-by-the-cci>.

⁴³ *Ibid*.

⁴⁴ Isha katiyar, *REVOLUTIONIZING DIGITAL COMPETITION: UNPACKING THE 2024 DRAFT BILL'S EX-ANTE & PRINCIPLES-BASED APPROACH*, GNLU-CCLR, (2024)

a proper platform.⁴⁵ Many sellers have noticed a 20 to 25% boost in their sales because they were able to get access to an advanced logistic network which they could have never afforded on their own.⁴⁶ This kind of incorporation can free up small businesses to focus on their core products and simultaneously improve consumer satisfaction through faster delivery and reliable services. Therefore, a strict ban on such practices might be unintentionally detrimental for the very sellers and consumers.

The draft bill does have the potential to level up the playing field for the start-ups that might have been previously discouraged by the superiority of tech giants. The only way for an efficacious enforcement is to strike a proper balance by applying these rules in such manner that it curbs harmful conduct without deterring the growth of incoming innovations which are beneficial for society. Studies suggest that an “error-cost approach” could help regulators assess whether a particular restriction is likely to harm innovation more than it helps for a healthy competition.⁴⁷ As these obligations do give some flexibility, but also exhibits an ambiguity for businesses. By enhancing the technical expertise of Competition Commission of India, it will ensure faster resolution of cases through a specialized benches and by steady monitoring of market will set an example as to how these rules affect the market and the necessary changes needed to ensure that the law promotes both equitable competition and innovation in the digital economy.

WAY FORWARD

The digital competition law is a developing and multifaceted field that has turned more fundamental as the global digital economy is expanding at a fast pace. The proposal of Draft Digital Competition Bill, 2024 in India is a substantial shift in the *ex-post* enforcement of the antitrust laws to the *ex-ante* system. This shift is intended to tackle the challenges which are exhibited by the dominant digital platform and brings India in the same footing with international trends in regulation that are now seen in the European Union, United Kingdom and Australia. The draft aims to build a more competitive and fair market by vigorously combating anti-competitive behaviour. This sector is an evolving field and has its significance with increased growth of the digital economy. The draft bill in India is a sudden shift in the

⁴⁵ Marco Botta, Klaus Wiedemann, *The Interaction of EU Competition, Consumer, and Data Protection Law in the Digital Economy: The Regulatory Dilemma in the Facebook Odyssey*, Vol. 64(3), 428-446, (2019).

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

paradigm in the implementation of the Competition Act, which has been based on ex-post enforcement, which targets to create a more contestable digital market and adjust with the changing meaning and dynamics of the market to prevent harmful activities. Nevertheless, this shift does come with its downfalls as market dominance by large tech firms and their ability to command huge volumes of data can ultimately influence competition to consumers, which makes it detrimental for the consumers. Therefore, policymakers need to be sure about such changes as excessive restrictive measures can have superfluous effects of hindering innovation and discourage investment and restrict positive integration that helps start-ups and small players.

The principle based structure of the Draft Digital Competition Bill is versatile, although it may cause uncertainty to various market players. With the shift from ex-post to *ex-ante* framework the Competition Commission of India (CCI) also needs an increased technical knowledge in the digital market in order to use clear guidelines and the capability to adjudicate and investigate cases in a timely manner. It also needs an overlap and coordination with other regulatory authorities such as *Digital Personal Data Protection Act (DPDPA), 2023* for prohibiting duplication.⁴⁸ For the purpose of achieving this, it is necessary for the law to become more flexible and be constantly checked for improvisation which should be followed by constant monitoring of changing dynamics of the market, and by following international trends. When applied effectively this can serve as a striking balance between competition, innovation and upholding consumer welfare in the digital era.

⁴⁸ Digital Personal Data Protection Act, 2023, No. 22, Acts of Parliament, 2023 (India).