REGULATING THE DIGITAL ECONOMY: A CONSTITUTIONAL AND LEGISLATIVE ANALYSIS OF THE DIGITAL COMPETITION BILL

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ABSTRACT

In the age of digitalisation of individual users, India is 3rd largest in the world. It is estimated to grow twice which will be nearly one—fifth of national income by 2029-30. As digitalisation of Indian market has taken place and is growing day by day statutory regulation becomes important specially for e-commerce entities. For example, Amazon, Flipkart, etc. which were accused of predatory pricing, self-preferencing. However, everything cannot be written in law and some power is delegated to subordinate authorities which is important for smooth functioning of any regulation. On the other hand, it should also be ensured that is delegation does not exceed its limit.

This paper deals with the legislative analysis of the digital competition Bill and its overlap with the Digital personal data Protection Act. It also compares the Bill with the Digital Markets Act of European Union to anaylsesss the loopholes on the bill and indicate that these should be amended in order to ensure smooth functioning of the Digitalised economy.

INTRODUCTION

As per the Report of State of India's Digital Economy (SIDE) published by the Indian Council for Research on International Economics Relations (ICRIER), India is the third largest digitalized economy in the world, which is estimated to contribute almost 13.42% in the GDP by 2025. Government has introduced various programmes such as Open Network for Digital Commerce (ONDC) which helps small businessmen to list themselves on digital marketplace. But with this the market structure and dynamics are also changing in the digital market, which can lead to abuse of power by the dominant enterprises having significant presence and hold on the market. Therefore, in 2024 Digital Competition Bill was introduced in the parliament which uses an ex-ante regulatory regime to designate enterprises as a Systematically Significant Digital Enterprises (hereinafter referred to as SSDE) under Section 3 and 4 of the Bill.

This paper deals with the provisions of the Digital Competition Bill and its intersection with the constitution and administrative law, digital personal data protection Act (hereinafter referred to as DPDP Act), competition Act. The paper deals with the Background of the digital competition bill. Moreover, how it is similar or different from the laws prevailing in other countries specially Digital Markets Act of European Union. It also deals with the fact that the provisions of digital data protection are overlapping with the DPDP Act which has the exclusive jurisdiction to deal with provisions related to Data protection.

BACKGROUND

The Competition Law Review Committee ("CLRC") was established by the Ministry of Corporate Affairs ("MCA") to examine the Indian competition regime and offer suggestions for updating and amending the Competition Act's main substantive and procedural provisions after ten years of enforcement under the Competition Act. The CLRC also covered topics including "big data" and modern digital marketplaces. Given that India's digital economy was still in its infancy, the CLRC believed that it might be too soon to amend the Competition Act to regulate digital entities. Instead, it recommended a regular assessment of emerging trends around the world and how they might affect Indian policy.

In light of the competitive advantage that these factors offer to large digital enterprises, the CLRC, for example, discussed whether Section 19(4) of the Competition Act, which outlines

an inclusive list of factors for evaluating whether an enterprise enjoys a dominant position, should be amended to include "control over data" or "network effects." But at the time, the CLRC had determined that Section 19(4) was inclusive and gave enough latitude to account for such new variables when determining dominance. According to the CLRC Report, new thresholds based on general guidelines for merger notice under the Competition Act should be introduced.

In response to this suggestion, the Competition (Amendment) Act, 2023 established a threshold of INR 2,000 crore for deal value, which must be met in order to notify the CCI of a transaction if the corporation being purchased has "substantial business operations" in India. Under Sections 19(6) and 19(7) of the Competition Act, the Competition (Amendment) Act, 2023 has also broadened the definition of the "relevant market" by defining elements like the type of services offered and the expenses related to changing supply or demand.

THERE IS A VIOLATION OF DELEGATED LEGISLATION IN THE BILL

EXCESSIVE DELEGATION

The Parliament has itself realized how extensive the practise of delegation has become, the extent to which it has surrendered its own functions in the process, or how easily the practice might be abused.[1] If the subordinate authority keeps within the powers delegated, the delegated legislation is upheld valid; but if it does not, the Court will certainly quash it.[2] The Hon'ble SC has held that if the legislature has not laid down sufficient guidelines, it ultra vires the Constitution for the exercise of administrative discretion.[3]

Section 7(3) of the Digital Competition act gives the Commission unfettered discretion to impose differential obligations on Systemically Significant Digital Enterprises (SSDEs) and Associate Digital Enterprises without any clear standards or limitations set by the legislature. This lack of guidelines allows the Commission to engage in arbitrary rule-making, which amounts to excessive delegation. Section 14 grants the Commission broad authority to determine what restrictions are "integral" to Core Digital Services, again without providing clear statutory criteria or legislative intent.

[1] Vasanlal Maganbhai v. State of Bombay AIR 1961 SC 4.
[2] Yasin v. Town Area Committee AIR 1952 SC 115.
[3] Hamdard Dawakhana v. UOI AIR 1960 SC 554.

Moreover, if the parent act is Constitutional, the validity of the delegated legislation can still be challenged on the ground that the law cannot be presumed to authorize anything that may be in contravention of the Constitution.[4] Delegated legislation is designed to fill those needs and is meant to supplement and not supplant the enabling statute.[5]

The DCA provisions in question fail to provide clear guidance or limitations on how the Commission should exercise its powers, resulting in excessive delegation. Without specific guiding principles, the Commission is free to enact rules that may go beyond the legislative intent. The delegation is valid only if it includes clear control mechanisms, such as specific standards or guidelines to prevent arbitrary exercise of power.[6]

Section 49(2)(g)[7] grants the Commission the power to frame regulations for conduct requirements of Core Digital Services under Section 7(3)[8] without setting clear parameters on how these regulations should be structured. The unreasonable rules are ultra vires, the rule is based on the presumptions that the legislation never intended to give the power to make unreasonable rules and therefore they are ultra vires.[9]

In ***Dwarka Prasad v. State of UP***[10], the Hon'ble SC observed that the licensing authority has been given absolute power in granting, cancelling etc of licence. No rules have been framed and no directions given on these matters to regulate or guide the discretion of the licensing authority. Similarly, Section 49(3) allows the Commission to frame regulations with regard to the nature of services, business users, and other undefined factors, leaving substantial discretion to the Commission.

Weak Controlling Mechanism

The Court held that executive action must remain under legislative scrutiny to avoid misuse of powers. Delegation without checks results in weak accountability mechanisms.[11] The DCA allows the Commission to exercise quasi-legislative powers to frame regulations without

[4] Narendra Kumar and others v. Union of India AIR 1960 SC 430.
[5] St. Johns Teachers Training Institute v. Regional Director, National Council for Teacher Education AIR 2003 SC 1533.
[6] State of Punjab v. G.S. Gill AIR 1997 SC 2324.
[7] Digital Competition Bill, s 49(2)(g).
[8] Digital Competition Bill, s 7(3).
[9] SB Yadava v. State of Haryana AIR 1981 SC 561.
[10] Dwarka Prasad v. State of U.P. AIR 1954 SC 224.
[11] Subramanian Swamy v. CBI AIR (2014) SC 2140.

requiring approval or review by Parliament, leading to unchecked regulatory powers. This weakens the mechanism of legislative control, which is crucial in a democratic setup to prevent arbitrary actions by executive bodies.

The wide-ranging powers conferred by Section 7(3) and Section 49(2)(g) are not subject to sufficient parliamentary control, which results in a weak oversight mechanism. This allows the Commission to create binding rules with little to no scrutiny from the legislative body, thereby compromising transparency and accountability. The Court has observed the importance of procedural safeguards in the regulatory process to prevent arbitrary decision-making.[12]

The Supreme Court held that excessive delegation without clear standards can create a legislative vacuum, leading to arbitrary rule-making. The legislature must provide clear criteria to guide the executive body's discretion[13]. The Court observed that where legislation fails to provide specific guidelines for the exercise of executive power, a vacuum is created that can lead to arbitrary decision-making[14]. However, DCA does not provide clear criteria for imposing differential obligations on SSDEs and Associate Digital Enterprises. The Commission is given broad authority to create obligations based on vague and undefined factors such as "the nature of the market" or "the number of users in India," leaving a legislative vacuum in terms of concrete standards or guidelines.

Arbitrary

Arbitrarily means in an unreasonable manner or fixed or done capriciously or at pleasure, without sufficiently determining principles not founded on the nature of things non-rational not done or acting according to reason and judgment depending on the will alone.[15] The Hon'ble Court has emphasized that vague and broad delegation of powers is inherently risky and prone to misuse.[16]

The Court ruled that absolute discretion in any law is unconstitutional unless there are proper safeguards to prevent its arbitrary use. The DCA's provisions giving wide discretionary powers to the Commission, without procedural safeguards or policy limitations, violate this

[12] Krishna Mohan v. Union of India AIR (2019) SC.
[13] Vasu Dev Singh v. Union of India, AIR 2006 SC 309.
[14] Hamid Ansari v. Union of India (2008).
[15] Sharma transport v. government of Andhra Pradesh, (2002) 2 SCC 188.
[16] Dhirendra Kumar Mandal v. Superintendent and Remembrancer of Legal Affairs AIR (1954) SC 1954.

principle.[17]The national government enjoys a fair amount of discretion in choosing the means for protecting national security; yet, if there is a risk that a system of secret surveillance for the protection of national security may undermine democracy, there must be an adequate and effective guarantee against its abuse.[18]

Vague and Broad Powers

The Supreme Court has observed that when broad powers are delegated to a regulatory body, they must be guided by objective criteria to prevent arbitrary exercise of discretion. If the criteria for delegation are unclear, it leads to arbitrary decision-making.[19] The Court struck down certain provisions of Air India's regulations as arbitrary, emphasizing that unfettered discretion in the hands of authorities, without clear guidance, leads to arbitrary decisions.[20] The Supreme Court held that delegation is permissible if the legislature has provided adequate guiding principles.[21]

S. 7(3) allows the Commission to decide what constitutes an appropriate obligation for SSDEs without providing clear legislative guidance on how these decisions are to be made. It lacks specific standards for "nature of market" or "number of users," making it vulnerable to challenge under this principle. However, these criteria are vague, giving the Commission unfettered discretion to impose burdensome obligations without clear legislative control. The Court has observed where a law empowers an authority to exercise discretion, the law must lay down clear guidelines to prevent arbitrary exercise.[22]

Section 14 of the DCA lacks such guidelines, potentially enabling arbitrariness. It gives the Commission the power to define which "restrictions" are integral to the provision of a Core Digital Service. Again, this grants a significant degree of discretion without laying down clear legislative principles, potentially leading to inconsistent or arbitrary determinations. The Court observed that discretion conferred on a statutory body must be accompanied by clear, objective guidelines.[23]

[17] S.G. Jaisinghani v. Union of India (1967).
[18] Weber and Saravia v. Germany (2008) 46 EHRR SE 5.
[19] Kishan Prakash Sharma v. Union of India AIR (2001) SC 1493.
[20] Air India v. Nergesh Meerza AIR (1981) SC 1829.
[21] Jyoti Pershad v. Union Territory of Delhi AIR (1961) SC 1602.
[22] D.S. Nakara v. Union of India AIR (1983) SC 130.
[23] Madhya Pradesh Industries Ltd. v. Union of India (1966).

S. 49(2)(g) and 49(3) allow the Commission to make regulations for various factors, including conduct requirements, based on broad and undefined criteria such as "nature of the industry" or "any other factor the Commission may deem fit." This invites potential arbitrariness, as the Act does not specify how these factors are to be weighed or applied.

Uncontrolled Power

The concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution[24]. The legislative actions can also be tested upon non-arbitrariness standard.[25] Arbitrariness is the quality of being arbitrary or uncontrolled in exercise of will. The power conferred upon the government are said to permits arbitrary and capricious exercise of power if they are vagrant and no standards or principles are laid down by the statute to guide and control such exercise of power.[26]

The phrase "and such other factors that the Commission may deem fit" in Section 7 grants uncontrolled discretion, allowing the Commission to decide obligations without legislative guidance or objective standards. the term "integral" is not clearly defined in Section 14, and the Commission is given the authority to specify what constitutes "integral" restrictions without any legislative checks or precise guidelines.

Section 49(2)(g) allows the Commission to make regulations on conduct requirements for each Core Digital Service under Section 7(3). The Commission can frame these regulations without clear guidelines from the legislature, effectively granting it unchecked authority to decide what obligations apply to digital enterprises. The absence of specific criteria or standards to guide the Commission's rule-making process leads to uncontrolled power to create rules with significant impact on market players, without legislative review or supervision.

Legislative Vacuum

The Supreme Court held that excessive delegation without clear standards can create a legislative vacuum, leading to arbitrary rule-making. The legislature must provide clear criteria

[24] Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SSC 722.
[25] Kr Lakshmanan v. state of Tamil Nadu (1996) SC 1153.
[26] Narainda v. State of MP (1974) 4 SCC 788.

to guide the executive body's discretion.[27] The Court observed that where legislation fails to provide specific guidelines for the exercise of executive power, a vacuum is created that can lead to arbitrary decision-making.[28]

The DCA does not provide clear criteria for imposing differential obligations on Systemically Significant Digital Enterprises (SSDEs) and Associate Digital Enterprises. The Commission is given broad authority to create obligations based on vague and undefined factors such as "the nature of the market" or "the number of users in India," leaving a legislative vacuum in terms of concrete standards or guidelines.

Breach of Basic Structure Doctrine

It is submitted that the provisions of DCA are in violation of the Basic Structure Doctrine of the Indian Constitution as it undermines key constitutional principles such as separation of powers, excessive delegation of legislative powers to the Commission, granting it wide discretionary authority without sufficient guidance, safeguards, or checks and balances. The court has the power to declare any constitutional amendment void if it changes the basic structure of the Constitution.[29]

Violation of Fundamental Rights

Part III of the Constitution contains the Fundamental rights and thus protects substantive as well as procedural rights.[30] These fundamental rights act as a fetter on plenary legislative powers[31] and uphold the dignity of every individual[32]. These fundamental rights mentioned in Part III are a part of the basic structure of the Constitution of Pochinki[33]. Therefore, any law that abrogates or abridges such rights would be violative of the doctrine of basic structure.[34]

The test of permissible classification is two-fold: (a) the classification must be founded on intelligible differentia which distinguishes persons or things that are grouped from others that are left out of the group, and (b) this classification shall have a rational relation to the objective

[27] Vasu Dev Singh v. Union of India AIR (2006) SC 309.
[28] Hamid Ansari v. Union of India (2008).
[29] Kesavananda Bharti v. State of Kerala AIR 1973 SC 1461.
[30] Pratap Singh v. State of Jharkhand, (2005) 3 SSC 551.
[31] Society for unaided private schools of Rajasthan v. UOI (2012) 6 SSC 1.
[32] Namit Sharma v. UOI (2013) 1 SCC 745 (800).
[33] IR Coelho v. state of Tamil Nadu (2007) 2 SCC 1.
[34] State of West Bengal v. Committee for protection of Democratic Rights (2010) 3 SCC 571.

that the Act sought to achieve i.e., it shall have nexus.[35] In *D.S. Nakara v. Union of India*[36], where the Supreme Court struck down a provision that discriminated without reasonable justification. A classification that is not based on an intelligible differentia and lacks a rational nexus with the object of the law is unconstitutional.

Absence of Clear Guidelines for Differential Treatment

In ***State of AP v. Mcdowell and Co,***[37]. The Hon'ble SC clarified that a mere allegation of arbitrariness by itself is not sufficient ground for striking down. Discrimination is a recognized ground of violation of Art 14 and an Act which is shown to be discriminatory can be said to be arbitrary. Legislation which is arbitrary is unreasonable. The discretion exercised by a statutory authority must also be tested on the anvil of the constitution scheme.[38] The right to equality is a basic feature of the Constitution[39] and the Parliament cannot transgress the principle of equality.[40] Therefore, no action of the State should be of an arbitrary and irrational nature that distinguishes among individuals.[41]

Section 7(3) grants the Commission the power to impose differential conduct requirements for SSDEs based on vague factors like "the nature of the market" or any other factors "the Commission may deem fit." Under Section 14 the Commission is given the discretion to decide what restrictions are "integral" to the provision of the Core Digital Service, allowing for different interpretations across businesses, which could lead to unequal obligations being imposed on the petitioner compared to its competitors.

Differential Treatment Lacks Rational Nexus

While the State is permitted to exercise differentiation amongst certain individuals who are differently situated, it must possess a *rational nexus* with the object of the enactment and an *intelligible differentia*.[42] If a classification is made between two groups shall a real and substantial difference shall exist and the reasonableness of classification shall be determined

[35] State of WB v. Anwar Ali sarkar AIR 1 SC 75.
[36] DS Nacara v. Union of India AIR 1983 SC 130.
[37] State of M.P. v. Mcdowell and Co. (1996) 3 SSC 709.
[38] Southern Tech Ltd v. CIT 2010 2 SSC 548.
[39] *M.G.* Badappanavar v. State of Karnataka (2001) 2 SCC 666.
[40] Kesavananda Bharati v. State of Kerala (1973) 4 SCC 225; AIR 1973 SC 1461.
[41] Om Kumar v. Union of India (2001) 2 SCC 386; AIR 2000 SC 3689.
[42] Kangshari Haldar v. State of WB, AIR 1960 SC 457.

from case-to-case.[43]

Section 49(2)(g) and 49(3): Allow the Commission to make regulations regarding the conduct requirements for Core Digital Services, but do not specify how these regulations will ensure that businesses are treated fairly and consistently.

Separation of Power

The theory of separation of power postulates that the three government powers must always be kept separate and exercised by separate government organs in a free democracy.[44] The Constitution restricts the jurisdiction of the three government powers minutely and expects them to exercise their respective powers without overstepping their limits. They should function within the limits allotted to them.[45]

The DCA excessively delegates the power to the Commission to make binding regulations on crucial aspects of digital services. S.7(3) and 49(3) grant the Commission the power to frame regulations with minimal guiding principles, giving it a legislative function that should be performed by the Parliament. This disrupts the balance of power between the legislature and the executive. S. 49(3) gives the Commission wide powers to impose conduct requirements without any meaningful restrictions or guidelines. The phrase "any other factor that the Commission may deem fit" further allows it to act without legislative direction, infringing on the lawmaking role of the Parliament.

The Supreme Court held that essential legislative functions cannot be delegated and only ancillary powers may be conferred on executive bodies.[46] The Court reiterated that excessive delegation of powers without adequate safeguards or guidance violates the separation of powers and is unconstitutional.[47] The Court held that the separation of powers is a basic feature of the Constitution and that any law or action that violates this principle is unconstitutional.[48]

The Digital Competition Act (DCA) violates the doctrine of separation of powers by granting the Commission broad legislative, executive, and quasi-judicial powers without sufficient

[43] Roop Chand Adlakha v. DDA, 1989 Supp (1) SCC 116.
[44] JJ Upadhyay, *Administrative law,* (CLA 2016).
[45] Golaknath v. State of Punjab, AIR 1967 SC 1643.
[46] In Re Delhi Laws Act (1951) AIR 332.
[47] State of Punjab v. Khan Chand (1974) AIR 543.
[48] Indira Nehru Gandhi v. Raj Narain AIR (1975) SC 2299.

guidance or legislative oversight. Sections like 7(3), 14, 49(2)(g), and 49(3) confer on the Commission excessive authority to make and enforce rules, blurring the lines between the executive and legislative functions.

Therefore, hon'ble court that the power to deal with any of the acts of the anti-competitiveness and the abuse of the dominant position has been given under the Section 3 and Section 4 of the Competition act respectively and the Competition Commission has the direct jurisdiction under section 19 of the said act to deal with it.

THE PROVISIONS ARE IN INTERSECTION WITH COMPETITION LAW AND DIGITAL PERSONAL DATA PROTECTION ACT

In ***Haridas Exporters v. All India float glass manufacturers association***[49], the hon'ble Supreme Court held that the competition act is a special statute which deals with anti-competition and it is to borne in mind that if the activity undertaken by some persons is anti-competitive and offends section 3 of the act, the consequences thereof are provided in the competition act.

It is within the exclusive domain of the Competition Act to deal with any of the offences pertaining to any anti-competitive practice and to find out whether a particular agreement will have AAEC on competition within the relevant market. CCI is an experienced body in conducting competition analysis and further CCI is more likely to opt for structural remedies which would lead the sector to evolve a point where sufficient new entry is induced thereby promoting genuine competition.[50] The specific and important role assigned to CCI cannot be completely washed away and the comity between the sectoral regulator and market regulator is maintained.

It may be noted that the primary grievance of the respondents relates to the various alleged anti-competitive agreements and the abuse of dominant position, amounting to violation of Section 3 and 4 of the act. In this regard, it must be noted that none of the areas covered under competition Act are covered under DCA. Specifically, DCA cannot arrive at a determination as to whether an enterprise has made exclusivity agreements and has abused its dominant

[49] Haridas Exporters v. All India Float Glass Manufactures Association, (2002) 6 SCC 600.
[50] Whatsapp LLC v. CCI 2022 SCC OnLine Del 2582.

position.

In the pertinent matter, the legislative intent of the respective legislations is the keystone to deal with the issue of the jurisdiction and the by considering the very same point, the Competition act has the legislative intent to establish a framework to control the anti-competitive behaviour of a firm or company that has a negative impact on competition in the country's market.[51]

Furthermore, the act seeks to encourage and maintain market competition, safeguard the interests of consumers, and safeguard market freedom in our country. The Supreme Court relied upon the observations made in ***LIC v. D.J. Bahadur***[52] wherein it has been held that in determining whether a statute is a special or a general one, the focus must be on the principal subject-matter plus the perspective.

Anti-steering provisions refer to contractual or policy restrictions imposed by a platform on its business user[53]s, aimed at preventing them from directing consumers to alternative offers or services outside of the platform's own offerings. In **XYZ v. Alphabet Inc**[54], the Competition Commission of India (CCI) ruled against Google, highlighting concerns related to anti-steering provisions imposed by Google on app developers. These provisions, covered under sections 4(2)(a)13 and 4(2)(c)14 of the Competition Act, prevent business users of the Google Play Store platform from steering consumers to offers other than those provided by Google.

It is apparent that the mere overlap between the competition act and DCA does not detract from the power that is vested with the CCI under the competition act. The CCI act can be triggered by any person who is affected by anti-competitive and abusive behaviour of an enterprise, and the decision of the market will apply across the market to everyone, whereas the scope of DCA is limited only to the criteria of Systematically Significant Digital Enterprise (SSDE) and nothing more.[55]

[51] CCI v. JCB India Ltd. 2014 SCC OnLine Del 6739.
[52] LIC v. DJ Bahadur (1981) 1 SCC 315.
[53] Vikram Sinha and Sharmadha Srinivasan, '*An Integrated Approach to Competition Regulation and Data Protection in India*' (2021) 9 CSI Transactions on ICT 151-158.
[54] XYZ v. Alphabet Inc. 2020 SCC OnLine CCI 41.
[55] Harri Kalimo and Klaudia Majcher, The Concept of Fairness: Linking EU Competition and Data Protection Law in the Digital Marketplace, 42 E.L. REV. 210 (2017).

The mechanism under DCA is insufficient to enable to effectively inquire into the allegations of anti-competitive or abusive behaviour of an enterprise. The competition act itself, by the provision of section 60 prohibits raising contention of anti-competitive agreements and abuse of dominant position before any other authority.

Section 18 of the competition act highlights the duties of the commission which state that the role of the CCI is to eliminate practices having adverse effects on competition, promote and sustain competition, protect the interests of consumers and enforce freedom of trade carried on by other participants, in markets in India.

The Delhi High Court in the case of ***Telefonaktiebolaget L.M. Ericsson v. CCI***[56], interpreted Sec. 62 of the act and stated that the competition act is an additional legislative framework that works alongside other laws. Hence, the competition law is in addition to the DPDP Act, which means the competition law will work alongside the DPDP act.

The prima facie order passed by the commission under the DCA under the provision of Sec. 16(1) and proceeded on wrong presumption of law and usurpation of jurisdiction, unless the issues of anti-competitive agreements and abuse of dominant position and issues related thereto are settled by the Authority under the Competition Act, there is no question of initiating any proceedings under the DCA.

There will be double jeopardy (violation of non bis idem Principle)

That there will be violation of Provisions of Article 20(3) of the Constitution.

In the judgment of ***Telefonica SA v European Commission***[57], the General Court of European Union held that the European Union could intervene in the telecommunications market, even though the entry was regulate through a sectorial regulator. This judgment was upheld by the European Court of Justice. The protection against double jeopardy is provided under Article 20(3) of the Constitution of Technoterra and that trying of cases under DCA will lead to it.

The original and exclusive jurisdiction to deal with the issue of anti-competitive agreements and the abuse of dominant position rests with the competition act, trying such issues under

[56] Telefonaktiebolaget L.M. Ericsson v. CCI 2015 SCC OnLine Del 14689.
[57] Telefonica SA v European Commission T-336/07.

DCA will by violative of Article 20(3) of the constitution. Thus, the matter involved trying under two different statutes for the same offences, the happening of which is unconstitutional.

The principles of prohibition of double jeopardy, undoubtedly constitutes one of the cornerstones of any legal system based on the rule of law, and its rationale lies in ensuring legal certainty and equality. The European Court of Justice (ECJ) has repeatedly acknowledged that it has been enshrined in criminal law proceedings but that must also be observed in the proceedings that may lead to the imposition of fined under the competition law. [58]It precludes an undertaking from being found liable of proceedings being brought against it afresh on the grounds of anti-competitive conduct for which it has been declared not liable by an earlier decision that can no longer be challenged.

The principle is subject to a two-fold condition:

1. That there is a prior definitive decision
2. The prior decision and the subsequent proceedings or decisions concern the same person and the same offence

The recent judgments of Court of Justice of European Union in the cases of **case bpost SA**[59] and **Case Nordzucker AG**[60], addressed the question of whether there is unlimited protection against double prosecution and punishment for one and the same competition law offense. In doing so, the ECJ clarified the principle of "*ne bis in idem*".

Therefore, these provisions are completely to be tried under the competition act as the act only have the exclusive jurisdiction to deal with the cases whose subject matter is anti-competitive agreements and abuse of dominant position. Therefore, it is submitted before the court that there will be violation of the principle of double jeopardy, if the case is tried under the DCA. Therefore, exclusive jurisdiction to deal with the case of petitioners lie completely and exclusively within the competition act and the issues must be dealt under the act only and.

[58] Michael Flynn, China: A Market Economy, 48 Geo. J. Int'L L. 297, 301 (2016).
[59] Bpost SA C-117/20.
[60] Nordzucker AG C-151/20.

That Digital Personal Data Protection Act is the specialized legislation for dealing with the issues pertaining to data-related contraventions

General Laws are the provisions and the statutes that deal with the basic types of crimes. It can be said that these laws apply to generic crimes that include actions and circumstances similar to a broad number of offences and do not have many specific attributes to set them apart. [61]The ECJ's judgment of ***Asnef-Equifax v. Ausbanc***,[62]upholds that even when consumer interests are affected, issues related to personal data are not a matter of competition law but are to be resolved by the relevant provisions governing data protection. Therefore, the data-related matter will fall under the commission constituted under the DPDP Act.

In the case of ***TomTom/Tele Atlas***[63], the commission recognized the dimension of privacy and stated that it may be used as a criterion for quality when evaluating a merger under the competition law. Moreover, the Competition (Amendment) Act, 2023 was surpassed to cope the challenges of competition law in digital market.[64]

But, with the development of society, crimes have also advanced and now cause injury in specialised forms and arenas. Accordingly, the lawmakers have also introduced newer and updated Special Laws to keep up with such special crimes, having special actions and circumstances distinguishing them from other offences.

The Latin maxim of '*generalia specialibus non-derogant*' shall be applied. It is a well-recognized principle of interpretation which means that 'the general does not derogate from the special' or that 'the special shall prevail over the general', as had been declared by Justice Griffiths, in the case of ***R v. Greenwood***,[65] that, "The maxim 'generalia specialibus non derogant' means that for the purposes of interpretation of two statutes in apparent conflict, the provisions of a general statute must yield to those of a special one." Therefore, data related are specific issues under DPDP Act and thus the exclusive jurisdiction is with board of that act.

[61] A.K. Patnaik (ed.), G.P. Singh's, *Principles of Statutory Interpretation* (14th edn., LexisNexis Butterworths, New Delhi, 2016) p. 410.
[62] Asnef-Equifax v. Ausbanc Case C-238/05.
[63] TomTom/Tele Atlas Case COMP/M.4854 TomTom/Tele Atlas, Comm'n decision, 2008 OJ C 237.
[64] Competition law Amendment Bill (Apr. 12, 2023).
[65] R v. Greenwood (1992) 56 O.A.C. 321 (CA).

Moreover, in the case of ***State of Gujarat v Patel Ramjibhai,***[66] the court had deemed generalia specialibus non derogant as a "cardinal principle of interpretation". In this case, the Supreme Court had held that the issue regarding a special class of unregistered dealers shall be assessed under the special Section of 33(6) specifically dealing with that class, even if its features may align with those mentioned in the general Section 35.

The terms pertaining to data control and the precise definition of informed consent has been defined in section 6 of the Digital Personal Data Protection Act and the grounds on which data can be taken and what is the scope of that data sharing has been specifically provided under the Act.

The data principles are to whom the data relates has to be served with a notice in accordance with Section 5 of the Digital Data Protection Act and the allegations of data sharing in the present case will be completely fall under the scope of aforesaid act and being a special legislation as framed by the legislature, it is pertinent to try the case of alleged data related and privacy related matters in Digital Personal Data Protection Act and not the Digital Competition Act.

Another prominent case on this maxim had been that of ***Maharaja Pratap Singh Bahadur v Man Mohan Deo,***[67] had explained that "where there are general words in a later Act capable of reasonable and sensible application without extending to subjects specially dealt with by the earlier legislation, you are not to hold that earlier or special legislation indirectly repealed, altered or derogated from merely by force of such general words, without any indication of particular intention to do so."

In ***Ashok Marketing ltd. v. Punjab National Bank,*** [68] the court held that the special statute would prevail over the general law. Doctrine of harmonious construction applies, since there is a conflict of jurisdictional issues both the competition and DPDP can co-exist in order to avoid any conflict with CCI can take over once the proceedings under the DPDP Act have been concluded or the CCI has carried out the final decision rest at the Appellant Tribunal after the investigation proceedings.

[66] State of Gujarat v Patel Ramjibhai (1979) 3 SCC 347.
[67] Maharaja Pratap Singh Bahadur v Man Mohan Deo AIR 1966 SC 1931.
[68] Ashok Marketing ltd. v. Punjab National Bank 1990 (4) SCC 406.

Therefore, contraventions of the anti-competitiveness and the abuse of dominant position shall be dealt under the Competition Act and the alleged contraventions of the data related issues which pertains to scope of data sharing and privacy matters shall be dealt under the Digital Personal Data Protection Act.

COMPARISON OF DIGITAL COMPETITION BILL WITH DIGITAL MARKETS ACT OF EU

DESIGNATION CRITERIA

Broadly speaking, there is a qualitative and quantitative threshold is used in both the laws for designation. Digital Markets ACT (hereinafter referred to as DMA) was adopted in 2022 to identify and selectively regulate the behaviour of of large digital undertakings in an ex-ante regulation. For an entity to be designated as a Gatekeeper, Article 3(1) of DMA prescribes three qualitative thresholds, namely that an entity:

Qualitative thresholds	*Quantitative thresholds-*
i. Significant impact on the internal market (**SUBSTANTIALITY**)	1. Substantiality- Annual Union turnover =/> EUR 7.5 Bn in last 3 FYs (each), OR Average market capitalization =/> EUR 75 Bn in last FY, AND Provides same CPS in =/> 3 Member States;
ii. CPS is an important gateway for business users to reach end users (**CRITICALITY**)	2. Criticality- CPS has =/> 45 Mn monthly active end users AND =/> 10,000 yearly active business users in the Union in the last FY
i. Enjoys an entrenched and durable position or will in the foreseeable near future (**DURABILITY**)	3. Durability- Where user thresholds in point (2) met for each of last three FYs

But in the Digital Competition Bill, Section 3(1) the following criteria is adopted

Qualitative thresholds	*Quantitative thresholds-*
• '**Significant Presence**' in the provision of CDS in India	**. Financial thresholds** to be met in each of the last three FYs: (i) India turnover =/> INR 4000 Cr, OR (ii) Global turnover =/> USD 30 Bn, OR (iii) India GMV =/> INR 16000 Cr, OR (iv) Global market capitalization =/> USD 75 Bn, AND **2. User thresholds** to be met in **each** of the **last three FYs**: (i) End users =/> 1 Cr, **OR** (ii) Business users =/> 10,000

Moreover, in the case of ***Bytedance Ltd., v. European Commission 2024***, the court held that it is artificial to separate one from the other and to accept the relevance of quantitative element alone where it is in fact intended to support argument of a qualitative threshold. Therefore, both the criteria's go hand in hand and one cannot be separated from the other. But the criteria which is used under the Digital Competition Bill, the criteria is very vague.

Article 2(20) and (21) of Digital Markets Act deals with the definitions of end users and business users. Annex - identifies them as **Unique**' users and deals with Method of calculation and Specific CPS based definitions. Moreover, **Article 3(8):** Lists qualitative factors such as network effects, data driven benefits, user lock-in, vertical integration, other factors, for when quantitative thresholds not met.

However, under Digital competition bill there is no specification whether these users are active users, passive users or business users which makes it vague and certain. But, **Section 3(4)(6):** Method of identification and calculation of Business and End Users through subsequent regulations. In addition **Section 3(3):** Lists qualitative factors to be considered when quantitative thresholds not met. It totally leaves the criteria on the executive authority to specify it via further regulations. Therefore, there are certain limitations under the Bill which can be further explained by taking into consideration DMA of European Union.

CONCLUSION

Therefore, it can be concluded that the digital competition Bill lacks constitutional validity. Moreover, there are certain provisions which are against the general competitive practices such as self-preferencing. Also, the designation criteria of enterprises as SSDE is vague and ambiguous. The legislative reformers have taken into consideration only those factors which hey deems fit. But it led to a lot of loopholes in the designation criteria. Thus, we need to take help from the digital markets Act of the European Union with a special focus on the fact that takes into consideration both quantitative criteria and qualitative criteria and gives due regard to both of these factors and giving a definite meaning to all qualitative factors such as number of users, significant presence etc.