A CRITICAL STUDY ON THE EXPANDING SCOPE OF DIGITAL MARKETS IN INDIA AND AN ANALYSIS OF THE ROLE OF DIGITAL COMPETITION BILL 2024 IN IDENTIFYING AND RECTIFYING HIDDEN IRREGULARITIES IN THE DIGITAL MARKETS

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ABSTRACT

The technological development over the years has upgraded the operation and conduct of economic activities from traditional markets to the virtual hub. The internet and the web have largely contributed to the shift in commercialisation, leading to the creation of a world of digital markets. The term Digital Market denotes any business or commercial activity operating in the digital arena. In comparison to the growth in the digital industry the development of efficient and effective laws to govern and regulate the same has been minimal. Identifying and rectifying irregularities in digital markets is difficult due to a lack of information, owing to its recent origin, giving rise to abusive practices. The Digital Competition Bill 2024 is an attempt by the union legislature to administer the operation of digital markets and address the disproportionality between the ongoing developments and the existing regulation in the digital arena. The bill's goal is to combat anti-competitive market behaviours such as self-preferencing, circumvention and steering, to ensure transparency and competition. This bill brings the concepts of 'Systemically Significant Digital Enterprise' and 'Associate Digital Enterprise[1]' into light. This research paper aims to outline the current status of digital markets in India and discuss the various anti-competitive practices. This paper then analyses the practicality, enforceability and need for the Digital Competition Bill by focusing on the new measures that it aims to introduce and the loopholes. It then digresses by attempting to explore other digital competition regulating acts and specifically by examining the nature and operation of the European Union Digital Markets Act. This research paper finally concludes by examining the implications of the bill and

[1] According to Article 4(9) of the Digital Competition Bill, 2024, if an enterprise that is or is to be designated as a Systemically Significant Digital Enterprise is a part of a group of enterprises which provide core digital services in India, then such other enterprises may be regarded as Associate Digital Enterprise.

emphasising its role in achieving a balanced regulatory framework that ensures fair competition.

Keywords: Digital Competition Bill, digital markets, anti-competitive practices, systemically significant digital enterprise, self-preferencing.

INTRODUCTION

Digital markets are channels that facilitate trade, investment and business across digital platforms. Competition plays an important role in ensuring that markets and businesses thrive as it is often said that competition is the driving force behind business. Unchecked competitive forces could undermine the very mechanisms through which markets generate economic value. Therefore, regulation of competitive forces and entities in the market becomes vital so as to ensure profitability and social welfare.[2] Various laws [3] have been passed in India with the intent to ensure that anti-competitive practices are not encouraged in markets. Due to rapid advancements in technology, digital markets like e-commerce, advertising websites, and other online service provides are flourishing.[4] As these markets grow exponentially, some enterprises may resort to unlawful conduct through anti-competitive practices. Keeping in mind this possibility, the legislature has come up with a comprehensive code to regulate and monitor digital markets and prevent anti-competitive practices. The Digital Competition Bill contains provisions addressing various anti-competitive practices. It describes penalties, qualifications to become a Systemically Significant Digital Enterprise (SSDE), exemptions, powers of regulatory authorities and other miscellaneous provisions. However, there have been debates as to the enforceability, necessity and practicality of the act and with concerns that it might hinder economic growth instead of promoting competition.

DIGITAL MARKET: MEANING AND OPERATION

Business, commerce and industrialisation in the modern world are not confined and limited to the boundaries of the traditional markets. Instead, it has evolved into a convenient forum known as the digital market, transitioning from commerce to e-commerce, industrialisation via digitalisation, which also benefits small-scale businesses. As per reports, digital markets across

[2] Allen Ripley Foote, "Unregulated Competition Is Destructive of National Welfare" (July 1912) *JSTOR* https://www.jstor.org/stable/1012306?seq=1 accessed 14 August 2025.
[3] Monopolies and Restrictive Trade Practices Act, 1969 (repealed); Competition Act, 2002 (12 of 2003); Competition Commission of India established under the Competition Act, 2002.
[4] Statista, "ECommerce – Worldwide | Statista Market Forecast" (2023) *Statista* https://www.statista.com/outlook/emo/ecommerce/worldwide accessed 14 August 2025.

the globe are growing at a rapid rate, projected to grow from USD 2.71 trillion in 2024 to USD 12.35 trillion by 2032 exhibiting a Compound Annual Growth Rate (CAGR) of 20.9%. Major market players globally that are controlling and influencing rapid digital transformation include Alphabet LLC, Oracle Corporation, Microsoft Corporation, Salesforce Incorporation etc[5].

According to Dr. Jorn Lengsfeld, a German economist, Digital markets can be defined in two different senses. The two meanings being[6]:

"Digital market is the confluence of supply and demand which comes about on the basis of digital information and communication technologies. It is a market that unfolds on a digital platform. It includes in particular virtual market places."

"Digital market is the confluence of supply and demand for digital goods, rights and services"

A. Digital markets comprise five major components, namely[7]:

a) *Artificial intelligence:*

AI is the simulation of human intelligence by software-coded heuristics[8]. AI has attracted the attention of regulatory authorities particularly due to anti-trust concerns such as abusive dominance, market foreclosure and algorithmic collusion[9]. Due to the complementary relationship and interdependence between artificial intelligence and consumer data, AI has acquired a significant stature in digital markets.

b) *Cloud:*

At its core, the cloud is a complex system of networked devices and servers that enables the functioning of a global digital space. The need to monitor and regulate cloud

[5] "Digital Transformation Market Size, Share, Growth | Report, 2028" (22 July 2024) *Fortune Business Insights* https://www.fortunebusinessinsights.com/digital-transformation-market-104878 accessed 14 August 2025.
[6] Jörn Lengsfeld, "Digital Market – Dr. Dr. Jörn Lengsfeld" *joernlengsfeld.com* https://joernlengsfeld.com/en/definition/digital-market/ accessed 14 August 2025.
[7] Robert MacDougall and Anaïs Bauduin, "The Digital Markets Competition & Consumers Act Is Now Law | Deloitte UK" (11 June 2024) *Deloitte UK* https://www.deloitte.com/uk/en/Industries/financial-services/blogs/the-digital-markets-competition-consumers-act-is-now-law.html accessed 14 August 2025.
[8] Gordon Scott, "Artificial Intelligence: What It Is and How It Is Used" (2023) *Investopedia* https://www.investopedia.com/terms/a/artificial-intelligence-ai.asp accessed 14 August 2025.
[9] Neelambera Sandeepan and *ET Telecom*, "Fair Play in the Digital Age: AI and Competition Law" (3 June 2024) https://telecom.economictimes.indiatimes.com/blog/fair-play-in-the-digital-age-ai-and-competition-law/110656674 accessed 6 August 2025.

computing services has piqued the interest of international competition regulators due to the underlying issues associated with it, such as data protection, self-preferencing and interoperability.

c) App stores:

App stores are the medium through which consumers gain access to apps which enable them to use digital services. Any enterprise having monopolistic control over app stores has the potential to change the course of the digital market in their favour by engaging in anti-competitive practices such as data usage, self- preferencing, steering etc.

d) Digital advertising:

Digital advertising is a method of promoting business. This form of marketing reaches a wider category of consumers in a short span of time in the most efficient manner since almost everybody has access to television, mobile phones etc. However, digital advertising may involve competition law violations due to its excessive dealing with consumer data and ability to manipulate consumer choice.

e) Browsers:

Browsers are software that enable users to explore the internet and World Wide Web. It serves as an essential tool to search, to navigate, and to interact with the digital platform. Regulatory issues associated with browsers are particularly related to inadequate privacy policy, third-party access to browser functionality and difficulty in switching to alternate browsers etc.

POTENTIAL ANTI-COMPETITIVE PRACTICES IN DIGITAL MARKET:

Digital markets, just like traditional markets, are prone to have enterprises that engage in anti-competitive practices.

The definition as provided under Section 2 of the Competition Act 1998 passed in the United Kingdom aptly describes the nature of anti-competitive conduct as, a situation wherein a person/firm is said to engage in anti-competitive conduct, whether by themselves or in cooperation with their associated persons, in the course of business, which is intended to

restrict, distort or inhibit competition in the supply, acquisition and production of goods or the procuring or provision of services within the United Kingdom, whether in whole or in part.

A. The major anti-competitive practices in digital markets are[10]:

a) *Anti Steering:*

Businesses and enterprises tend to direct consumers and channel their interests towards services provided by them. The purpose of anti-steering provisions is to ensure that consumers are provided with alternative offer and services without the enterprise stifling their choice by denying access to the same.

In the Digital Competition Bill, 2024, Section 14 contains provisions relating to anti-steering, according to which business users shall not be prevented by Systemically Significant Digital Enterprise, from leading their consumers to third-party services and from promoting their own services.

i. *Epic vs Google[11]:*

Epic Games Inc. is an American video game and software developer that filed federal lawsuits against Google LLC, wherein it challenged Google's monopolistic practices and Apple Incorporation's anti-steering provisions relating to the purchase of in-game content. Epic Games developed and released 'Fortnite Battle Royale' on the App Store and Play Store, however, those users who purchased V Bucks (in-game purchases) directly from Epic were offered better deals this being violative of the terms of the apps of the respondents led to the removal of 'Fortnite' from the play stores. The case although ruled against Epic, but upheld the claim relating to anti-steering provisions of Apple.

In response, Google filed a counterclaim alleging that Epic had breached its contractual obligation by failing to use Google Play's payment system in *Fortnite*. This suit also targeted

[10] Standing Committee on Finance, "Anti-Competitive Practices by Big Tech Companies" (2022) 53rd Report, Lok Sabha Secretariat.
[11] *Epic Games Inc v Google LLC (United States District Court for the Northern District of California, Case No. 3:20-cv-05671-JD).*

Google's 'sweetheart deal' with other enterprises[12][13]. A sweetheart deal refers to any agreement or contract that is an attractive and beneficial deal for a/some parties to the contract, but disadvantageous when considered as a whole. The jury ruled in favour of Epic and held that the practices adopted by Google were anti-competitive.

ii. XYZ (Confidential) v. *Alphabet Inc.[14]:*

The Competition Commission of India held Google responsible for its anti-steering practices. Google compelled its business users (app developers) to use Google Play's Billing System (GPBS) not only for receiving payments for apps but also for in-app purchases by end-users. It is not possible for the app developers to provide a link that directly leads to the webpage of Google Play's Billing System or encourage their users to use Google Play's preferred payment method. If app developers do not comply or agree with these terms, they will end up losing the vast consumer base as Google will remove them from the Google Play Store. CCI ordered Google to desist from engaging in anti-competitive practices and imposed a fine of Rupees nine hundred and thirty-six crores. Google appealed against this order, however, the order of CCI was upheld again.

b) *Platform neutrality / Self preferencing:*

As the term suggests self-preferencing refers to the practice of putting an enterprise's / business's own needs before considering those of others. Self-preferencing refers to "preferential treatment granted by a platform to its own products and services."[15] Self-preferencing involves search and ranking preferencing as a technique to bring the consumer's attention to their services.

In the Digital Competition Bill, 2024, the practice of self-preferencing has been discussed in Section 11. The provisions state that an SSDE shall be prohibited from favouring its own

[12] Abhinav Kaustubh, "Epic vs Google: Spotify's 'Bespoke' Play Store Deal Comes into Light" (21 November 2023) *The Times of India* https://timesofindia.indiatimes.com/gadgets-news/epic-vs-google-spotifys-bespoke-play-store-deal-comes-into-light/articleshow/105380797.cms accessed 6 August 2025.
[13] Sean Hollister, "Google Offered Netflix a Sweetheart Deal to Pay Just 10 Percent on Google Play" (10 November 2023) *The Verge* https://www.theverge.com/23954852/google-netflix-app-store-deal-play-10-percent-revshare accessed 14 August 2025.
[14] *XYZ (Confidential) v Alphabet Inc (Competition Commission of India) [2022] 145 taxmann.com 43 (CCI).*
[15] Jonathan Jacobson and Ada Wang, "Competition or Competitors? The Case of Self-Preferencing" (2023) 38 *Antitrust*.

services or those of related/third parties over those offered by other third-party business users.

i. Google and Alphabet vs. Commission[16]:

In the instant case, Google was held liable for its anti-competitive practices. Google engaged in self-preferencing by placing its own shopping service, Google Shopping, at the top of its generic search results page to the detriment of competing providers of shopping services. The Commission imposed a fine of €2.4 billion.

c) *Bundling and tying:*

The anti-competitive practice of bundling and tying is associated with the idea of the joint sale of more than one product in the market. Tying is a practice in which two products are sold together as a single transaction, where one of those products is available only if the consumer buys the other product. Bundling is a combination of products which are sold at a discount to make the deal look attractive.

Tying and bundling refer to a situation when a seller of multi-product makes the purchase of one product subject to the purchase of another.[17]

Bundling can be of two different types, namely pure bundling and mixed bundling. The former refers to the practice of selling multiple products together for a single price, wherein those products are not available for sale separately. The latter refers to the sale of multiple products at a discounted rate.

Tying can be of two types, one being technical tying and the other being contractual tying. Technical tying is when one product is designed to be a necessary accessory in order to use another product. Contractual tying is when enterprises require the consumers to purchase products together, creating the impression of an attractive offer. [18]

In digital markets, tying and bundling are often seen when enterprises attempt to integrate their

[16] *Google and Alphabet v Commission (General Court of the European Union, Case T-612/17, Judgment of 10 November 2021).*
[17] Amil Jafarguliyev, *Tying and Bundling in Digital Markets under the European Union Competition Law and Digital Markets Act* (Master's Thesis, 2023).
[18] Amil Jafarguliyev, *Tying and Bundling in Digital Markets under the European Union Competition Law and Digital Markets Act* (Master's Thesis, 2023).

software into the operating system[19] and prioritise the display of services provided by them in the search engine ranking[20] [21].

In the Digital Competition Bill, 2024, the offence of tying and bundling is discussed under Section fifteen, which prohibits the practice if committed by SSDE.

i. Microsoft Corporation vs. Commission [22]***:***

In the instant case Microsoft was held liable for its engagement in the anti-competitive practices of tying and bundling. Microsoft had been integrating the Windows Operating System with Microsoft Windows Media Player eleven and Internet Explorer twelve. This conduct was deemed to constitute an abuse of a dominant position. Microsoft also vowed not to bundle the software.

d) ***Data usage:***

Accumulation and analysis of personal data and business data of users and its commercial application for profitability has become a ubiquitous practice in digital markets. The monetisation of private data can be useful to the business; however, it has emerged as an anti-competitive practice. Consumer data is becoming increasingly relevant to competition law in two ways, primarily due to concerns regarding data privacy violation and secondly due to the use of consumer data by enterprises to provide personalised services to customers thereby enabling them to secure a dominant position in the market.[23]

The plethora of data generated on digital platforms can be aptly termed as 'Big Data'. Big Data, although a valuable digital asset, has led to several anti-trust violations over the years. The usage of data may be considered as a barrier for new entrants to enter the market. However, it is indeed an important factor in determining the extent of competition in the market, in the

[19] *Microsoft Corp v Commission* (General Court of the European Union, Case T-201/04, Judgment of 17 September 2007, ECLI:EU:T:2007:289).
[20] European Commission, "Case AT.39740 – Google Search (Shopping)" (Commission Decision C(2017) 4444 final, 27 June 2017).
[21] Stefan Holzweber, "Tying and Bundling in the Digital Era" (2018) 14(2–3) *European Competition Journal* 342–366.
[22] European Commission, "Case AT.39530 – Microsoft (Tying)" (OJ C 242, 9 October 2009) 20–21.
[23] Winston & Strawn LLP, "Consumer Data Monetization: The Antitrust Risks You Need to Know" *Competition Corner Blog* https://www.winston.com/en/blogs-and-podcasts/competition-corner/consumer-data-monetization-the-antitrust-risks-you-need-to-know accessed 14 August 2025.

sense that it may determine the timeliness, likelihood, and sufficiency of entry efforts an entrant might practically employ.[24]

Big data does not serve as an exogenous influence on market competitiveness; instead, it is an endogenous factor that makes up the internal structure and behaviour of the market. The case of Chrome overtaking Firefox and Internet Explorer, to become the predominant search engine, illustrates that despite the availability of massive amounts of data with dominant players, the possibility of new players entering the market still exists.[25]

i. Whatsapp Data Privacy Case [26] [27] [28]:

In 2021, a series of cases were lodged against WhatsApp alleging its engagement in anti-competitive practice via its privacy policy. Initially, in 2016, WhatsApp came up with a privacy policy that required users to share their personal data with its parent company, Meta. Although an opt-out was initially available, this was later made mandatory in 2021 to continue using WhatsApp's service. Consumers were left with no choice since WhatsApp had a huge network effect, making it difficult for them to switch to another alternative. CCI took suo-moto cognizance against WhatsApp, since the case involved unreasonable data collection and sharing that could provide a competitive advantage to dominant players potentially in the market. The case was ultimately ruled against WhatsApp, condemning their anti-competitive practices.

e) *Mergers and acquisitions:*

In digital markets, enterprises have been found to engage in anti-competitive practices through mergers and acquisitions. When functioning individually/independently, these enterprises may not hold a dominant share in the market. However, by merging with or acquiring other enterprises, such enterprises can increase their market share, exercise control and pre-empt future competition.

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[24] U.S. Department of Justice and Federal Trade Commission, *Horizontal Merger Guidelines* § 9 (2010).
[25] "Big Data and Barriers to Entry" (GAI Digital Report, 25 August 2020) https://gaidigitalreport.com/2020/08/25/big-data-and-barriers-to-entry/#_ftnref34 accessed 14 August 2025.
[26] *Vinod Kumar Gupta v WhatsApp Inc* (Competition Commission of India, Case No. 99 of 2016, order dated 1 June 2017).
[27] *Harshita Chawla v WhatsApp Inc and Another* (Competition Commission of India, Case No. 15 of 2020, order dated 18 August 2020).
[28] *WhatsApp LLC v Competition Commission of India* (2021) AIR Online 2021 Del 547.

Such "killer acquisitions" and mergers provide the merging entities with an unprecedented advantage, in most cases making them anti-competitive. These business practices are anti-competitive in the sense that they lead to an amalgamation of consumer data, monopolistic control of the market, reduced opportunities to entrants[29] and to a certain extent the provision of absolute power to determine market forces in the market in the hands of certain entities.

i. Case of the proposed merger of Walmart and Cornershop, 2019 –

In 2018, Walmart, an American multinational retail store attempted to acquire Cornershop, an online retail marketplace in Mexico. However, Mexico's regulatory authority, COFECE (Comisión Federal de Competencia Económica) blocked this acquisition[30]. The reasoning behind the same was that through this acquisition Walmart would acquire sufficient market to hinder, diminish or impede competition in the grocery shopping and distribution market. [31]

ii. Case of merger of Sun Pharmaceutical Industries Ltd. and Ranbaxy Laboratories Ltd.:

Sun Pharma proposed to merge with Ranbaxy Laboratories, making it an all-stock transaction worth $4 billion. This merger would make it India's largest drug maker. The Competition Commission of India believed that this proposed merger involved a prima facie competition law violation and would lead to an adverse effect on competition.

f) *Pricing / Deep discounting:*

Deep discounting is a frequently used tactic to throw out new players and existing competitors from the market. This strategy involves the provision of services to customers at prices lower than the cost of the service, which is much lower than the price charged by competitors. Predation is a business strategy that aims at achieving higher pay-offs in the future. Firms are

[29] Marc Ivaldi, Nicolas Petit & Selçukhan Ünekbaş, "Killer Acquisitions in Digital Markets May Be More Hype Than Reality" (15 September 2023) *VoxEU – CEPR* https://cepr.org/voxeu/columns/killer-acquisitions-digital-markets-may-be-more-hype-reality accessed 14 August 2025.
[30] United Nations Conference on Trade and Development, *Enforcing Competition Law in Digital Markets and Ecosystems: Policy Challenges and Options*, Note by the UNCTAD Secretariat, TD/B/C.I/CLP/74 (Geneva, 24 April 2024)
[31] "Walmart Acquisition of Cornershop Blocked by Mexican Authorities" (10 June 2019) *FoodNavigator-LATAM* https://www.foodnavigator-latam.com/Article/2019/06/10/Walmart-acquisition-of-Cornershop-blocked-by-Mexican-authorities accessed 14 August 2025.

willing to risk profits in the present to secure monopolistic control over the market in the future.[32]

i. Re: Meru Travel Solutions Private Limited (MTSPL) v. Uber India Systems Pvt. Ltd.[33]:

In the instant case Meru alleged that Uber was engaging in anti-competitive practices by employing the technique of predatory pricing to increase its market share and eliminate competition in the market in Delhi. Uber was facing a loss of two hundred and four rupees per ride. CCI stated that Uber did not have a dominant share in the market and was not abusing its market power in the relevant market. On appeal, however, COMPAT (Competition Appellate Tribunal) overturned this order. On appeal by Uber, the Supreme Court held that this strategy of deep discounting by Uber was anti-competitive and would turn the market in favour of Uber.

g) *Advertising Policies:*

Data generated on digital platforms is ultimately used to feed advertising policies. Advertising policies have the potential to determine the nature of the market and consumer preference. Misleading advertisement may amount to anti-competitive practices since it has the potential to affect consumer behaviour and negatively influence competition in the market.[34]

i. Google's Online Advertising Policy[35]:

Google's AdWords (Advertising Policy) allows firms on the digital market to bid and reserve certain keywords. On auction of the keyword, Google provides a higher/preferred ranking of the advertising policy of that firm (to which the keyword has been auctioned) on the Google search engine, giving it priority over the advertising links of other companies. Google also determines each advertiser's cost per click. Google is one of the largest advertising service

[32] Bhawna Gulati and Vipul Puri, *"Predation or Competition: Demystifying the Dilemma in Platform Markets"* (Competition Commission of India, Paper presented at the 6th National Conference on Economics of Competition Law, December 2021) accessed via CCI Journal on Competition Law and Policy
[33] *Uber India Systems Pvt Ltd v Competition Commission of India & Ors* (Civil Appeal No. 641 of 2017 WITH Civil Appeal No. 7012 of 2019, Supreme Court of India, Judgment dated 3 September 2019)
[34] Aiyar, P. Ramanatha, Advanced Law Lexicon, Volume 3, Wadhwa and Company Nagpur, 3034 (3rd Ed. 2005)
[35] Richard Whish, *et al.* (guest contributions), "Online Search Advertising Restrictions and Competition Law: Some Recent Lessons" (15 July 2019) *Kluwer Competition Law Blog* https://competitionlawblog.kluwercompetitionlaw.com/2019/07/15/online-search-advertising-restrictions-and-competition-law-some-recent-lessons/ accessed 14 August 2025.

providers.[36] Therefore, by bidding keywords, Google can determine and manipulate the extent of competition in the market.

h) *Exclusive tie-ups:*

As the term suggests, exclusive tie-ups involve firms restricting their business users from dealing with other enterprises, thereby limiting their dealing exclusively to one firm. The Standing Committee on Finance also highlighted that exclusive tie-ups would not only affect sales of other online service providers but also impact traditional brick-and-mortar businesses.

CCI also warned firms engaging in anti-competitive practices to refrain from forming exclusive tie-ups. This intervention arose after it was found that exclusive tie-ups in the phone market led to increased sales of these products on digital platforms, impacting the sale through retail markets.[37] In 2018, CCI decided to launch an investigation against the alleged involvement of Amazon and Flipkart in an exclusive tie-up to create an environment that renders them as the major (if not only) online marketplace for phones.[38] [39] The companies appealed against the same, however the writ petitions were dismissed by the court.[40]

DIGITAL COMPETITION BILL: AIM AND NEED

The underlying basis of any anti-trust law can be defined as "Firms may acquire monopoly power by establishing an infrastructure that renders them uniquely suited to serve their customers. Compelling such firms to share the source of their advantage is in some tension with the underlying purpose of antitrust law, since it may lessen the incentive for the monopolist, the rival, or both to invest in those economically beneficial facilities."[41]

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[36] Statista, "Digital ad market share of major ad-selling companies in the US by revenue" (2023) *Statista* https://www.statista.com/statistics/242549/digital-ad-market-share-of-major-ad-selling-companies-in-the-us-by-revenue/#:~:text=In%202023%2C%20Google%20accounted%20for,21.1%20and%2012.5%20percent%2C%20 respectively accessed 14 August 2025.

[37] "CCI warns e-commerce sites of investigation into exclusive-sale tie-ups, ranking of products" (11 January 2020) *Business Today* https://www.businesstoday.in/latest/corporate/story/cci-warns-e-commerce-sites-of-investigation-into-exclusive-sale-tie-ups-ranking-of-products-242829-2020-01-11 accessed 14 August 2025.

[38] Nirmala Sitharaman, "Budget 2024: Government eases norms for ship, aviation MRO industry to promote India as a hub" (23 July 2024) *LiveMint* https://www.livemint.com/companies/budget-2024-government-eases-norms-for-ship-aviation-mro-industry-to-promote-india-as-a-hub-11721729145531.html accessed 14 August 2025.

[39] *Delhi Vyapar Mahasangh v Flipkart and Amazon*, Case No. 40 of 2019 (Competition Commission of India) [order published online] https://www.cci.gov.in/images/antitrustorder/en/4020191652260285.pdf accessed 14 August 2025.

[40] *Amazon vs CCI*, Writ Petition No. 3363 of 2020 C/W W.P. No. 4334 of 2020 (High Court of Delhi)

[41] *Verizon Commc'ns v Law Offices of Curtis V Trinko, LLP*, 540 U.S. 398, 407–08 (2004).

The Competition Act, 2002 provides a suitable and efficient framework for addressing competition law violations. However, due to the ever-evolving nature of businesses, markets, and technology, there is a growing need to address violations that have transformed into opaque practices that flourish in the form of hidden irregularities in the digital markets. These violations go unnoticed due to the lack of surveillance and regulated framework. Therefore, there exists a necessity to formulate a law that would address the above-mentioned concerns. The central legislature has attempted to address the same through the Digital Competition Bill, 2024. The bill aims to achieve the twin objective of monitoring big tech companies and maintaining fair competition through a regulatory framework. The Digital Competition Bill has incorporated the "ex-ante framework" to address competition law violations in digital markets at the earliest, allowing the Competition Commission of India to undertake pre-emptive measures to prevent the occurrence of any anti-competitive practices. Under the ex-ante framework, the Competition Commission of India is empowered to take a preventive action against enterprises that may engage in anti-competitive behaviour, even before such conduct actually occurs.

A. Is the Digital Competition Bill, 2024 really necessary?

The Competition Act, 2002 provides for an ex-post framework, wherein the Competition Commission of India intervenes after the violation has been committed.[42] Although, ex-post framework is a fairly effective intervention for dealing with competition law violations, the same would rather be inefficient in digital markets on account of their ever-evolving nature, which requires preventive measures instead of remedial ones.[43] Businesses operating on digital markets operate differently from those in traditional markets, which require a code/law that specifically address the issues associated with them. Digital markets deal with a plethora of confidential and sensitive consumer data, the management and handling of which if not regulated would lead to irreversible repercussions.

Although the Digital Competition Bill aims to achieve certain novel objectives, transforming

[42] Shreeja Sen, "Time for Upgrade: Why Competition Law Is Not Enough for the Platform Economy" (20 February 2022) *Bot Populi* https://botpopuli.net/time-for-upgrade-why-competition-law-is-not-enough-for-the-platform-economy/#:~:text=It%20is%20usually%20implemented%20on,to%20regulate%20the%20digital%20economy accessed 14 August 2025.

[43] Marco Ottaviani and Abraham L Wickelgren, 'Ex Ante or Ex Post Competition Policy? A Progress Report' (2011) 30(1) *International Review of Law and Economics* 25–32 https://www.sciencedirect.com/science/article/abs/pii/S0167718711000233 accessed 14 August 2025.

the same into actions is a massive task. The Competition Act (2002) already has a well laid defined framework and mechanism to deal with competition law violations. Besides certain initiatives such as the ex-ante framework, data and privacy related concerns, etc, the question of whether a separate act is necessary or not arises. The existing Competition Act may itself be amended to incorporate the changes (which are very few) that Digital Competition Bill proposes to introduce, therefore not requiring the creation of a new law.[44] The most novel and appreciated feature of the Digital Competition Bill, 2024 is the introduction of the 'ex ante approach', the need for which is based on the very fact that investigation for competition law violations in digital markets is time-consuming and therefore not efficient. However, this may be a 'feature of digital markets and not a bug', and may still continue to exist despite the change in the approach.[45]

Besides this, there have been several complaints and concerns as to the issues associated with the bill. It is alleged that the bill is more of a problem, than a solution, since it imposes excessive regulations, compliances and penalties, which will ultimately prove harmful for business and economic growth. There are also several allegations that the provisions which categorise an enterprise as a 'Systemically Significant Digital Enterprise', by specifying certain qualifications will end up targeting small businesses and enterprises, snatching away the very little competitive advantage that they possessed in order to survive in the market. In the act, in order to be qualified as an SSDE, an enterprise must have a turnover of four thousand crores or a user base of one crore. Achieving a consumer base of one crore users may seem like something that is possible only for big enterprises. However, due to rapid technological development, the same is possible even for small-medium enterprises. When such enterprises do get classified as SSDE, they will be exposed to a number of regulatory requirements that have to be complied with. This, in the bigger picture is unfair towards the small enterprises since they are considered to be equal in competition with other tech giants, who are in reality much stronger in terms of finance, consumer base, data and competitive advantage. [46]

[44] Kasturi Ranganath, "A Separate Digital Competition Law Isn't Required" (*The Hindu Business Line*, Opinion, published [date not given]) https://www.thehindubusinessline.com/opinion/a-separate-digital-competition-law-isnt-required/article67969563.ece accessed 14 August 2025.
[45] International Center for Law & Economics, *ICLE Comments on India's Draft Digital Competition Act* (22 April 2024) https://laweconcenter.org/resources/icle-comments-on-indias-draft-digital-competition-act/ accessed 14 August 2025.
[46] "Impact of Digital Competition Bill on India's Homegrown Startup Ecosystem" (*Business Standard*, Start-ups section, published 1 July 2024) https://www.business-standard.com/companies/start-ups/impact-of-digital-competition-bill-on-india-s-homegrown-startup-ecosystem-124070101008_1.html accessed 14 August 2025.

WHAT CATEGORY OF COMPETITION LAW VIOLATIONS DOES THE DIGITAL COMPETITION BILL SEEK TO ADDRESS?

The Digital Competition Bill seeks to regulate and prevent anti-competitive practices undertaken by firms 'only on digital markets'. This narrows the scope of the act, since it focuses only on e-commerce, tech giants and other digital enterprises.

The Digital Competition Bill categorises certain operations/ activities as anti-competitive practices. The competition law violations identified in the act are:

- Self-preferencing – Section eleven
- Data Usage – Section twelve
- Restricting Third Party Applications - Section thirteen
- Anti-Steering - Section fourteen
- Tying and Bundling - Section fifteen

The above-mentioned competition law violations have already been discussed in the paper.

COMPARATIVE ANALYSIS OF LAWS REGULATING DIGITAL COMPETITION IN OTHER COUNTRIES

A) European Union:

Competition in digital markets in the European Union is regulated by the Digital Markets Act.[47] This act primarily aims to regulate the behaviour of six enterprises, namely, Alphabet, Amazon, Apple, ByteDance, Meta and Microsoft. These six companies have been classified as 'gatekeepers' that provide 'core digital services.' The European Parliament was of the opinion that these enterprises have the potential to control, dominate and determine the course of competition in the market in a manner that was favourable to them and prejudicially to others. The need for the introduction of this act is based on the very fact that due to the ever-evolving

[47] European Parliament and Council, *Regulation (EU) 2022/1925 of 14 September 2022 on Contestable and Fair Markets in the Digital Sector (Digital Markets Act)* [2022] OJ L265/1, adopted 14 September 2022, published 1 November 2022, entered into force 2 May 2023.

and expanding scope, size and potential of digital markets, the possibility of companies/ enterprises manipulating and controlling the market has increased. These enterprises over the years have acquired massive amounts of consumer data, have mastered their hold of the market and have gained the ability to not just function on their own, independent of market forces, but also being able to influence them.

The European Commission had conducted a series of investigations to examine if big tech companies were engaging in anti-competitive practices. One such investigation was the probe launched against Meta's pay or consent policy. [48] This policy required consumers to pay a certain fee to be able to enjoy Meta's services ad-free or consent to their data being used for ads. This practice by Meta was condemned by the commission due to the use of imprecise language determining the nature of the service, it being an unfair contract and Meta denying consumers access to fair alternative service to those who refuse to pay or consent to their data being used. [49]

The Digital Markets Act (DMA) differs significantly from the Digital Competition Bill (DCB). Firstly, DMA employs a rule-based approach, wherein certain offences and rules are specified which cannot be violated. On the other hand, DCB follows a principle-based approach, which specifies certain guidelines which are open to be implemented and followed in accordance to with the subject and the situation. Besides DMA has a greater degree of certainty, accuracy and specificity. [50] Secondly, the role of the Competition Commission as illustrated under the two laws is also different. For instance, in DMA, it is the European Commission which has the power to exempt companies from being categorised as 'gate-keepers'. However, in DCB, it is the Central Government which has a say in the matter. Thirdly, DMA has adopted a horizontal approach, wherein the same set of regulatory compliances are applied to all 'gatekeepers' irrespective of industry-specific standards, realities and practices. DCB on the other hand has adopted a vertical approach, which involves specifying regulations based on industry-specific dynamics, making it more accommodative and pragmatic. Besides this, the provisions

[48] European Commission, "Commission opens investigation under the Digital Markets Act (Article 7(4) DMA) — Meta Platforms," *European Commission Press Corner* (Press release, 2 July 2024) https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3582 accessed 14 August 2025.
[49] "EU tells Meta its 'pay or consent' model violates law" (MediaNama, 1 July 2024) https://www.medianama.com/2024/07/223-eu-meta-pay-or-consent-model-violates-law/#:~:text=The%20model%20requires%20users%20to,pay%20to%20protect%20their%20data accessed 14 August 2025.
[50] Marco Ottaviani and Abraham L Wickelgren, "Ex Ante or Ex Post Competition Policy? A Progress Report" (2011) 30(1) *International Review of Law and Economics* 25–32 https://www.sciencedirect.com/science/article/abs/pii/S0167718711000233 accessed 14 August 2025.

describing violations and qualifications are more or less similar. It is also evident that DMA is more comprehensive and detailed, while DCB has versatile and dynamic yet obscure.

The Digital Markets Act is not void of criticism. There have been several concerns as to the practicality and enforceability of the act among others. Experts claim that the enterprises 'gatekeepers' have merely agreed on paper to comply with the rules, indicating superficial compliance with the act in order to trick the regulatory authorities, ultimately making the initiative futile. [51]

B) United Kingdom:

The Digital Markets, Competition and Consumers (DMCC) Act regulates competition in digital markets and protects consumer rights in the United Kingdom.[52] This act was introduced after the report by the Digital Competition Expert Panel brought it to the attention of legislatures that digital markets require separate regulations to govern the same. This act aimed at increasing competition in digital markets, where earlier only a few enterprises were able to successfully survive.

Similar to DCB and DMA, DMCC also categorises certain enterprises as those having 'Strategic Market Significance', based on their market power and position in the market. Under the SMS regime, these enterprises are required to adhere to the merger control regime and the tailored code of conduct. This act proposed to change the existing competition law by introducing changes in the area of mergers and acquisitions and other anti-trust concerns.[53] DMCC unlike DCB has extra-territorial operation. This is of significant importance to regulate the increasing cross-border business transactions.[54] DMCC also vests the competition authorities with enhanced powers of investigation. It contains provisions that facilitate

[51] Vanessa Hao, "Europe Is Already Using the Digital Markets Act. Its Experts Are Frustrated." (*The Verge*, 6 March 2024) https://www.theverge.com/2024/3/6/24091695/digital-markets-act-eu-compliance-experts accessed 14 August 2025.
[52] UK Parliament, *Digital Markets, Competition and Consumers Act 2024* (c 13), adopted by Parliament on 23 May 2024, received Royal Assent 24 May 2024; expected to enter into force in autumn 2024.
[53] Bird & Bird LLP, "'The Digital Markets, Competition and Consumer Bill' Passes: A New Era Begins" (*Insights*, 29 May 2024) https://www.twobirds.com/en/insights/2024/uk/the-digital-markets-competition-and-consumer-bill-passes-a-new-era-begins accessed 14 August 2025.
[54] Travers Smith LLP, "Extraterritorial Reach of CMA Information-Gathering Powers – The Fight Continues" (*Knowledge*, [date not specified]) https://www.traverssmith.com/knowledge/knowledge-container/extraterritorial-reach-of-cma-information-gathering-powers-the-fight-continues/ accessed 14 August 2025.

decentralised investigation and impose an obligation upon third parties to preserve and submit relevant evidence.

According to sources, DMCC is expected to increase competition in the market, provide consumers with better services and harmonise the global digital economy. [55]

C) Japan:

The Act on Improving Transparency and Fairness of Digital Platforms, 2020 aimed at regulating competition in digital markets in Japan. Competition in Japan is governed by the Antimonopoly Act (AMA) and the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade. However, according to the Study Group Report on Alliances there were certain problematic cases under AMA with regard to access, misuse, dominance, monopoly, manipulation and restriction to the use and availability of data.

The Japanese Fair-Trade Commission (JFTC) incorporated the provisions of the above-mentioned acts with certain necessary changes to make a robust digital competition law. The Guidelines Concerning Distribution Systems and Business Practices aimed at restructuring e-commerce websites and regulating the collection and distribution of data.[56] JFTC launched a series of investigations[57] [58] [59] [60] on allegations of the existence of exclusionary practices[61],

[55]Jason Furman (Chair, Digital Competition Expert Panel), *Unlocking Digital Competition: Report of the Digital Competition Expert Panel* (UK, HM Treasury, 13 March 2019) (often called the "Furman Report") https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/785547/unlocking_digital_competition_furman_review_web.pdf accessed 14 August 2025.

[56] Huan Zhou, *Digital Markets Guide: Third Edition — Japan Spotlight: Key Trends in Digital Policymaking* (Global Competition Review, [date not specified]) https://globalcompetitionreview.com/guide/digital-markets-guide/third-edition/article/japan-spotlight-the-key-trends-in-digital-policymaking accessed 14 August 2025.

[57] Japan Fair Trade Commission, "On Closing the Investigation on the Suspected Violation of the Antimonopoly Act in the IT/Digital Sector" (Press release, 1 June 2017) https://www.jftc.go.jp/en/pressreleases/yearly-2017/June/170601.html accessed 14 August 2025

[58] Japan Fair Trade Commission, "Closing the Investigation on the Suspected Violation of the Antimonopoly Act by Airbnb Ireland UC and Airbnb Japan K.K." (Press Release, 10 October 2018) https://www.jftc.go.jp/en/pressreleases/yearly-2018/October/181010.html accessed 14 August 2025.

[59] Japan Fair Trade Commission, "Closing the Investigation on the Suspected Violation of the Antimonopoly Act by Minna no Pet Online Co., Ltd." (Press release, 23 May 2018) https://www.jftc.go.jp/en/pressreleases/yearly-2018/May/180523_1.html accessed 14 August 2025.

[60] Japan Fair Trade Commission, *"The JFTC Opens an Investigation and Seeks Information and Comments from Third Parties Concerning the Suspected Violation of the Antimonopoly Act by Google LLC, etc."* (Press Release, 23 October 2023) https://www.jftc.go.jp/en/pressreleases/yearly-2023/October/231023.html accessed 14 August 2025.

[61] "Exclusionary practice" (Concurrences Dictionary) https://www.concurrences.com/en/dictionary/exclusionary-practice accessed 14 August 2025.

parity clauses[62], the exercise of the dominance on digital markets and the misuse of consumer data.

Through the Act on Improving Transparency and Fairness of Digital Platforms, 2020, the government aims at securing minimal commitments, which although require compliance but provide digital enterprises with the power to regulate their conduct. This act also includes 'multisided markets' within the meaning of digital markets.

D) United States:

Competition law in the United States is governed by over twelve statutes. The major ones are the Sherman Act (1890), the Clayton Act (1914), the Federal Trade Commission Act (1914), the American Innovation and Choice Online Act (AICOA) and the Open App Markets Act (OAMA).

The American Innovation and Choice Online Act (AICOA) and the Open App Markets Act (OAMA) aim to prohibit and prevent the practice of self-preferencing, discriminatory application of terms and conditions and restricting other competitors from entering the market. [63] These acts also contain an exemption clause (similar to Section 38 under the Digital Competition Bill), which provides that if the conduct 'deemed to be anti-competitive' was 'reasonably necessary' for enhancing the services of the enterprise or preventing violation of any law or for safety and security, that enterprise can use the same as a defence against the allegations.[64]

IMPLICATIONS OF THE BILL:

The Digital Competition Bill 2024 is a timely and future-oriented regulation that will tackle anti-competitive behaviours in digital markets.

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[62] "Price-Parity Clauses in the Digital Era: A Competition Law Concern" (2023) *NUJSS ITC Blog* https://nujssitc.wordpress.com/2023/12/24/price-parity-clauses-in-the-digital-era-a-competition-law-concern/#:~:text=Essentially%2C%20price%20parity%20clauses%20forbid,or%20on%20their%20own%20web sites accessed 14 August 2025.

[63] *American Innovation and Choice Online Act* (S. 2992, 117th Cong., 2nd Sess. 2022) (introduced 18 October 2021; reported to Senate 2 March 2022, Calendar No. 301) https://www.congress.gov/bill/117th-congress/senate-bill/2992 accessed 14 August 2025.

[64] *Digital Markets Regulation Handbook: United States* (Cleary Gottlieb, Undated chapter, updated January 2024) https://content.clearygottlieb.com/antitrust/digital-markets-regulation-handbook/united-states/index.html accessed 14 August 2025.

The potential positive implication of the ex-ante mechanism aimed to be introduced by the act, would be evident as it would aid in the early identification and prevention of anti-competitive practices. The principle of 'preventive is better than cure' would be enforceable through this bill. At the same time, it has the capacity to cause unintended and negative consequences. This regulation may lead to excessive restrictions wherein enterprises would be restricted from certain commercial practices and initiatives which might be perceived as anti-competitive, but may not turn out to be so. Unnecessary interventions could lead to wastage of resources, discourage competition and dissuade enterprises from undertaking certain activities.[65] These would also create an environment wherein enterprises would be overcautious and frightened to experiment and operate freely in the market.

The aim of anti-trust law or competition law should be towards encouraging competition. Under the provisions[66] of this bill, the threshold criteria in order to be categorised as Systemically Significant Digital Enterprise on the face of it does not appear to be high. Considering the extent and scope of digital enterprises, the same is a modest number. The real challenge would be faced by the new companies. Start-ups and home-grown companies if subjected to the various compliance requirements and regulations would not be able to explore the various extents of the market. This would end up stifling competition and discouraging new businesses from starting. Enterprises which are already well established would be able to develop their way around these regulations, since their foundation in the market is strong, the same is not the case with start-ups. Such excessive regulations and penalties will end up making businesses and entrepreneurship burdensome, thereby making the market and environment less conducive for growth and development.[67]

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[65] Naval Satarawala Chopra, Yaman Verma, Supritha Prodaturi and Shivek Sahai Endlaw, 'Does India Require Ex-Ante Competition Regulation in Digital Markets? – Shardul Amarchand Mangaldas & Co' (*Shardul Amarchand Mangaldas & Co*, 19 May 2023) https://www.amsshardul.com/insight/does-india-require-ex-ante-competition-regulation-in-digital-markets/ accessed 6 August 2024.

[66] Primary Legislation Digital Competition Bill, 2024 (India), s 3(2):
"An enterprise shall be deemed to be a Systemically Significant Digital Enterprise in respect of a Core Digital Service, if:
(a) it meets any of the following financial thresholds in each of the immediately preceding three financial years:
(i) turnover in India of not less than INR 4000 crore; OR
(ii) global turnover of not less than USD 30 billion; OR
(iii) gross merchandise value in India of not less than INR 16000 crore; OR
(iv) global market capitalisation of not less than USD 75 billion, or its equivalent fair value of not less than USD 75 billion calculated in such manner as may be prescribed."

[67] Dhanendra Kumar, 'Impact of Digital Competition Bill on India's Homegrown Startup Ecosystem' (*Business Standard*, July 2024) https://www.business-standard.com/companies/start-ups/impact-of-digital-competition-bill-on-india-s-homegrown-startup-ecosystem-124070101008_1.html accessed 6 August 2025.

The Digital Competition Bill 2024, aims to regulate digital markets, ensuring fair competition and preventive anti-competitive practices. Although the bill is a good initiative, there are certain concerns as to its enforceability and practicality. The proposed ex-ante regime would lead to an excessive burden on courts. There is a very real possibility that the bill would not be able to cope with changes in the market and in other related legislations. The same has already been observed in the European Union Digital Markets Act. The Digital Competition Bill is based on various relatively new legislations. These laws although enforced in various countries, are still in their infancy period, making it difficult to assess whether those laws are practical and enforceable.

CONCLUSION:

The Digital Competition Bill 2024, is a one-of-a-kind initiative undertaken by the legislature. The aims of the bill are evident: regulation of conduct and competition in digital markets, promotion of competition and prevention of anti-competitive practices by digital enterprises. Given the scope, extent and pace of development in digital markets, there does exist a need to create a legislation that would regulate the conduct of enterprises operating on the same. For the bill to be efficient and effective in achieving its intended objectives, certain changes could be introduced to the bill. In order to ensure that the bill does not hamper the survival and growth of new/upcoming enterprises, it is essential that the qualifying criteria in order to be classified as 'Systemically Significant Digital Enterprise' be altered according to the stage and nature of the business. The current threshold criteria prescribed under the bill for an SSDE is relatively low and may be met by small and medium size enterprises. Considering the growth of digital platforms the same is likely to stifle innovation and impose unnecessary regulatory burden on mid-size firms by bringing them under the ambit of the legislation. Interventions under the ex-ante regime, must be undertaken only after thorough market research, valid evidence and justified apprehension of anti-competitive conduct/impact of the activity undertaken by the allegedly violating firm. Overuse and misapplication of the ex-ante framework is likely to hinder legitimate businesses and innovations. In order to prevent the same, only well-founded and proportionate regulatory interventions should be made. To prevent excessive accumulation of cases, it is vital that an efficient adjudicatory authority be established. The Digital Competition Bill, of 2024 is most definitely a positive step towards achieving transparency and regulating the digital markets, however, there is scope for improvement in the aforementioned areas.