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# JOINT DOMINANCE, VERTICAL AGREEMENTS, AND DEEP DISCOUNTS: LEGAL GAPS IN CCI'S OVERSIGHT OF DIGITAL GIANTS

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## ABSTRACT

The rapid growth of digital and online markets have resulted in many unexpected challenges in regulation of competition in the market. In India, the Competition Commission of India (CCI) has to respond to varieties of market power exercised by the digital market giants. This paper aims to identify and examine the legal and regulatory gaps in the enforcement of provisions regarding anti-competitive behaviours like joint dominance, vertical agreements and practices like deep discounting by the CCI. There has been a huge focus in cartel enforcement, abuse of dominance and monopoly in mergers but there has been a lack of focus of inquiry when it comes to inquiry in the intersection of the digital market with joint dominance and vertical agreements. The research methodology used in the paper is doctrinal and qualitative to examine the statutory provisions, case laws to derive substantial and procedural conclusions about India's competition law regime. It concludes that the silence of the statute regarding the joint dominance shows that CCI is unable to take actions against collective market power of digital platforms, vertical agreements in algorithm driven markets are not addressed completely and deep discounting is unevenly approached as well. There are also institutional hurdles like timelines of procedures, evidentiary burdens and also lack of sector specific expertise limit the ability of CCI to effectively regulate the rapidly evolving digital market. The paper concludes with proposed reforms such as the statutory recognition of joint dominance, adoption of effective analytical practices for vertical agreements in digital platforms and also guidelines on deep or predatory discounting. The paper also discusses some best international practices for effective regulation which is relevant for Indian market characteristics and also provides a legal and institutional reform to promote the CCI's regulation and its effectiveness to maintain the competition in the digital economy.

**Keywords:** Joint dominance, Vertical agreements, Deep discounting, The Competition Act, 2002, Competition Commission of India

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## INTRODUCTION

The evolution of digital markets has resurfaced the landscape of competition, businesses and even consumers' decision-making<sup>2</sup>. The digital platforms are not merely just intermediaries but they are now gatekeepers of various activities like controlling consumer data, economic actions and algorithmic actions to influence markets in every possible way<sup>3</sup>. In India, the emergence of digital commerce such as Amazon and Flipkart has transformed the whole view and definition of competition in retail as well as consumer behaviour. The Competition Commission of India was established for the purpose of promoting fair competition in the market and it has also played an important role in even addressing the competition issues like cartelisation, abuse of dominance and merger control<sup>4</sup>. However, new behaviour practices that are at the cutting edge of digital competition such as joint dominance, algorithmic driven vertical agreements and deep discounting have not been conclusively resolved under the prevailing statutory and regulatory framework.<sup>5</sup>

The main aim of this paper is derived from existing gaps in India's competition law regime in digital markets. The Competition Act, 2002 does not provide any explicit definition of joint dominance and hence the CCI lacks the authority to take action against two or more firms engaged in conduct that may harm competition altogether. This was seen in the case of Delhi Vyapar Mahasangh vs Flipkart Internet Pvt Ltd & Amazon Seller Services Pvt Ltd<sup>6</sup>. The CCI began an inquiry into issues like deep discounting, seller preference and exclusive arrangements that could disrupt small businesses from entering the market. It also addressed potential anti-competitive practices in the ecommerce sector, by clarifying the constraints of the statute being silent and the analysis of the regulator to intervene against vertical restraints and data driven arrangements in digital marketing.

The relevance of this inquiry was raised as India is among the fastest growing digital economies globally.<sup>7</sup> When competitive constraints are unregulated and the practice of deep discounting has the possibility of monopoly structure when consumers are seeking choices online. But in

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<sup>2</sup> David S. Evans, *The Antitrust Economics of Multi-Sided Platform Markets*, 20 Yale J. on Reg. 325 (2003).

<sup>3</sup> Lina M. Khan, *Amazon's Antitrust Paradox*, 126 Yale L.J. 710 (2017).

<sup>4</sup> Competition Act, 2002, No. 12 of 2003, §§ 3–4 (India).

<sup>5</sup> OECD, *Rethinking Antitrust Tools for Multi-Sided Platforms* (2018).

<sup>6</sup> Delhi Vyapar Mahasangh v. Flipkart Internet Pvt. Ltd., Case No. 40 of 2019 (CCI Jan. 13, 2020).

<sup>7</sup> UNCTAD, *Digital Economy Report 2021* (2021).

contrast, international regulations like Eurocommission<sup>8</sup> and Federal Trade Commission<sup>9</sup> have started to adjust their competition law framework to a more effective standard to acknowledge the digital market regulation as well. This can serve as a great example for framing Indian legislation as well for saving from falling behind in regulation.

The impact of not addressing such anti-competitive practices could be very serious. If we look on an economic level, exclusionary behaviour could reduce innovation and new entrants into the market. For consumers, while deep discounts could be a great way of attraction in the short run, it will lead to reduction of choices and welfare of the consumers which will simultaneously drive small rivals out of the market. On an institutional level, the CCI's inability to regulate will undermine its credibility in the market when it is supposed to act quickly to anti-competitive practices. Hence, the main objectives of the paper are (i) to examine the legal gaps in the Competition Act, 2002, specifically about joint or collective dominance in the digital markets (ii) to analyse whether the existing provisions under Sections 3 and 4 are sufficient to regulate vertical agreements like platform neutrality and algorithm-driven practices (iii) to examine whether the current legal framework effectively addresses anti-competitive nature of deep discounting and predatory pricing by digital platforms (iv) to analyse the enforcements gaps by the CCI in the effective regulation of anti-competitive behaviours in the market and (v) to propose necessary legislative and institutional reforms drawing from international practices like from EU and the US to strengthen the CCI's regulation of the digital economy. The paper seeks to address the failures of the Indian competition regime to address some real time digital market anti-competitive actions and risks in the economy and to protect consumers in the long term.

## **LITERATURE REVIEW:**

The existing scholarship on deep discounting, dominance, and digital market regulation reflects a growing concern regarding the structural and behavioural implications of pricing strategies and platform power in India's evolving e-commerce ecosystem. Manav Thakkar and Om Shukla examine deep discounting through a behavioural economics lens, demonstrating how psychological triggers such as loss aversion, anchoring, and the endowment effect influence impulsive consumer decision-making in Indian e-commerce markets, while also cautioning

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<sup>8</sup> Consolidated Version of the Treaty on the Functioning of the European Union art. 102, Oct. 26, 2012, 2012 O.J. (C 326) 47.

<sup>9</sup> Sherman Act, 15 U.S.C. § 2 (1890).

that sustained price manipulation may distort reference pricing and long-term competition, though their study stops short of analysing whether such practices amount to predatory pricing or abuse of dominance under the Competition Act, 2002.<sup>10</sup> Similarly, Achint Nigam, Prem Prakash Dewani, and Abhishek Behl analyse the “Deal of the Day” model across product categories and jurisdictions, empirically establishing that discount intensity varies across developed and emerging markets and is strategically deployed to influence scarcity perception and regret aversion, yet the study does not examine whether such targeted pricing strategies may lead to market foreclosure or discriminatory pricing under Indian competition law.<sup>11</sup> Jayant Kashyap shifts the focus toward regulatory enforcement, evaluating the Competition Commission of India’s role in addressing deep discounting, exclusivity arrangements, and platform dominance, and acknowledges investigative interventions involving major e-commerce players, but identifies structural weaknesses such as the absence of a coherent doctrine of joint dominance and limited scrutiny of vertical restraints, leaving a gap in systematic assessment of recurring discount-led distortions.<sup>12</sup> Expanding the lens to digital mergers, Shashank S. Katagar critiques the adequacy of merger control under the Competition Act, 2002 in addressing acquisitions of low-turnover yet high-impact technology firms, highlighting regulatory blind spots including algorithmic collusion, self-preferencing, and weak thresholds, though the paper does not sufficiently connect these merger-related vulnerabilities with ongoing anti-competitive conduct in India’s retail e-commerce markets.<sup>13</sup> Addressing a doctrinal omission more directly, Samyukta Rawat argues that the absence of explicit recognition of collective dominance under Section 4 of the Competition Act, 2002 significantly hampers the CCI’s ability to regulate oligopolistic<sup>14</sup> digital markets, especially where independent enterprises collectively exercise market power, yet the institutional and interpretive limitations of the CCI in operationalising such reform remain underexplored.<sup>15</sup> A comparative dimension is added by N. Nganthoybi Singha, who contrasts Indian and U.S. approaches to abuse of dominance under the Sherman and Clayton Acts and the Competition

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<sup>10</sup> Manav Thakkar & Om Shukla, A Study of E-Commerce Companies on the Behavioural Economics of Discounting, 4 *Indian J.L. & Legal Rsch.* 1 (2022).

<sup>11</sup> Achint Nigam, Prem Prakash Dewani & Abhishek Behl, Exploring Deal of the Day: An E-Commerce Strategy, 27 *Benchmarking: An Int’l J.* 2807 (2020).

<sup>12</sup> Jayant Kashyap, Ensuring Fair Competition and Innovation in India’s E-Commerce Sector: The Role of Competition Commission of India (CCI), 5 *Indian J.L. & Legal Rsch.* 1 (2023).

<sup>13</sup> Shashank S. Katagar, Digital Merger and Its Challenges to the Competition Law: Indian Laws, 2 *LawFoyer Int’l J. Doctrinal Legal Rsch.* 43 (2024).

<sup>14</sup> George J. Stigler, *A Theory of Oligopoly*, 72 *J. Pol. Econ.* 44 (1964).

<sup>15</sup> Samyukta Rawat, Collective Dominance: Clamant Need of Indian Competition Law, 2 *Indian J.L. & Legal Rsch.* 1 (June–July 2021).

Act, 2002, illustrating differences in enforcement style through cases such as *United States v. Microsoft Corp.* and *CCI v. Google*, but without examining vertical platform bias, preferential listings, or joint dominance as emerging digital harms.<sup>16</sup> Shrishti Verma further critiques India's competition framework for inadequately addressing digital-specific practices including deep pricing, preferred listings, and vertical restraints, drawing comparisons with European regulatory developments, yet omits sustained engagement with the doctrine of collective dominance in multi-platform ecosystems.<sup>17</sup> Beyond India, Christopher Thompson and co-authors model the spatial and economic expansion of deep discount retailers such as Aldi and Lidl in the United Kingdom, demonstrating that price-led growth strategies reshape consumer behaviour and retail geography, though their work remains confined to economic modelling without linking discount expansion to competition law implications.<sup>18</sup> Aakash Kumbhat provides a doctrinal examination of the CCI's evolving market definition analysis in digital platform cases, particularly in the Google decisions, recognising progress in distinguishing online markets despite zero-price models, but identifies inconsistencies in supply-side substitutability reasoning and limited engagement with digital self-preferencing and coordinated platform conduct.<sup>19</sup> Finally, Vikas Kathuria critiques the U.S. Supreme Court's market definition reasoning in *Ohio v. American Express Co.*, warning against rigid "transaction platform" classifications and advocating case-specific substitutability analysis, yet stops short of developing concrete legal standards to address platform-driven anti-competitive conduct in emerging jurisdictions such as India.<sup>20</sup> Collectively, these studies illuminate behavioural manipulation, regulatory gaps, market definition challenges, and structural omissions within Indian competition law, but they converge in revealing a persistent research gap concerning the integrated assessment of deep discounting, vertical restraints, and collective dominance within India's digital marketplace framework.

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<sup>16</sup> N. Nganthoybi Singha, *Dominant Position and Its Abuse: A Comparative Analysis of Competition Law in India and the US*, 5 *Indian J.L. & Legal Rsch.* 1 (2023); *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001); *Shri Google LLC v. Competition Comm'n of India*, Case No. 07 of 2012 (CCI Oct. 25, 2022).

<sup>17</sup> Shrishti Verma, *Critical Analysis of the Role of the Competition Law in the Sphere of the Digital Economy*, 4 *Indian J.L. & Legal Rsch.* 1 (2022–2023).

<sup>18</sup> Christopher Thompson et al., *Modelling the Future Opportunities for Deep Discount Food Retailing in the UK*, 22 *Int'l Rev. Retail, Distribution & Consumer Rsch.* 143 (2012).

<sup>19</sup> Aakash Kumbhat, *Google and the Evolution of CCI's Online Platform Market Definition Analysis*, 4 *Indian L. Rev.* 301 (2020).

<sup>20</sup> Vikas Kathuria, *Platform Competition and Market Definition in the US Amex Case: Lessons for Economics and Law*, 15 *Eur. Competition J.* 254 (2019); *Ohio v. Am. Express Co.*, 138 S. Ct. 2274 (2018).

## JOINT OR COLLECTIVE DOMINANCE

The provisions of competition law under the Competition Act, 2002 only provides for regulation of single entity dominance under section 4 which does not explicitly recognise collective or joint dominance by two or more entities in the market. Explanation (a) to Section 4<sup>21</sup> defines dominant position in terms of a single entity's ability to operate independently of any other competitive constraints or even influence the market in its own favour. Hence, any practices or actions by two or more entities in concert with each other in market power could become irrelevant in the effect of Section 4 which creates an absolute gap in the competition law.

The lack of inclusion of collective dominance has often been referenced in various CCI judgements. In *Niraj Malhotra vs Deutsche Post Bank Home Finance (2009)*<sup>22</sup>, when banking institutions were accused of imposing consistent penalties for the prepayments, it was held that none of the banks were shown to be independently dominant and the allegation was insufficient to establish dominance under Section 4. There was also absence of evidence under Section 3 for cartelisation also. Similarly, in *Delhi Vyapar Mahasangh vs Amazon & Flipkart case*<sup>23</sup>, an allegation of joint dominance was rejected on the ground that collective dominance is not recognised by the Act. Similar issue came up in the case of *Ashok Kumar Vallabhaneni vs Geetha SP Entertainment LLP*<sup>24</sup>, where CCI stated that Section 4 does not provide any effect for collective or joint dominance against independent enterprises and absence of evidence for cartel under Section 3 will lead to dismissal of complaints based on such allegations. In all the cases like *Sanjeev Rao vs Andhra Pradesh Hire Purchase Association*, *Sonam Sharma vs Apple*, *Vodafone and Airtel*, and *Meru Travel Solutions Pvt Ltd vs ANI Technologies Pvt. Ltd & Uber India Systems Pvt Ltd*<sup>25</sup>, they show an explicit enforcement gap in the competition regulation when two or more entities have an effect of anti-competitiveness in the market without any one of them having the individual dominance.

The Competition (Amendment) Bill, 2012<sup>26</sup> aimed in addressing this issue by proposing inclusion of the words “jointly” or “singly” in the Section 4 of the Act, which would have

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<sup>21</sup> Competition Act, 2002, § 4 Explanation (a) (India)

<sup>22</sup> *Neeraj Malhotra v. Deutsche Post Bank Home Finance Ltd.*, Case No. 05 of 2009 (CCI May 4, 2011).

<sup>23</sup> *Delhi Vyapar Mahasangh v. Flipkart Internet Pvt. Ltd.*, Case No. 40 of 2019 (CCI Jan. 13, 2020).

<sup>24</sup> *Ashok Kumar Vallabhaneni v. Geetha SP Entm't LLP*, Case No. 48 of 2015 (CCI Sept. 22, 2016).

<sup>25</sup> *Meru Travel Solutions Pvt. Ltd. v. ANI Techs. Pvt. Ltd.*, Case No. 25 of 2017 (CCI June 19, 2018).

<sup>26</sup> Competition (Amendment) Bill, 2012, Bill No. 136 of 2012 (India).

enabled CCI to regulate the cases of joint or collective dominance. But the Bill was never enacted. The Competition (Amendment) Act, 2023<sup>27</sup> was enacted introducing changes like deal value thresholds, settlement and commitment mechanism and expanded definition under Section 3 but did not amend Section 4 to recognise joint or collective dominance. Hence the statutory framework stills continues to confine the abuse of dominance analysis to a single enterprise or statutorily defined group of enterprises. This is in contrast with jurisdiction like European Union, where Article 102 of Treaty on the Functioning of the European Union (TFEU)<sup>28</sup> expressly states and prohibits “Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States”<sup>29</sup>. CCI has regulated unilateral dominance by entities under section 4 and anti-competitive agreements under section 3, but it has not been effective enough in oligopolistic structures where entities collectively show anti-competitive behaviour come without any explicit agreement or individual dominance.

A purposive interpretation of the provision could broaden the scope of regulation and include collective dominance, but judicial practice so far has remained formalistic in interpretation of the provision. The failure of the legislature to provide a clear statute to address the issue of joint or collective dominance is a serious gap when the digital market is evolving with more participation each day and algorithmic pricing and platforms make interdependency more likely.

## **VERTICAL AGREEMENTS**

A serious problem in regulating the digital market is inefficiency in regulation of platform neutrality and vertical agreements governed by the Competition Act, 2002. Platform neutrality mandates a platform to treat all sellers of the same class in the same manner without any bias or discrimination. Ecommerce platforms like Amazon and Flipkart serve dual roles of intermediaries and competitors and they do not tend to keep the neutral status of the platform through their act of preferential listing of preferred sellers or their own private labels. Algorithm based search results push individual sellers further down the search engine and the listing of products while affiliate sellers or paid sellers are featured in the top affecting any

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<sup>27</sup> Competition (Amendment) Act, 2023, No. 9 of 2023 (India).

<sup>28</sup> Case C-27/76, United Brands Co. v. Comm’n, 1978 E.C.R. 207.

<sup>29</sup>Id.

healthy competition.

These cases fall under the category of vertical agreements regulated under Section 3(4)<sup>30</sup> which allows arrangements like exclusive supply, distribution or even refusal to deal in certain cases. For example, when a B2C platform enters into such an agreement with say a couple of mobile phone brands, there is facilitation of timely launches of new products and sometimes traditional or small traders are replaced in the listing cases. The CCI's Market Study on Ecommerce (2020)<sup>31</sup> documented how these arrangements along with deep discounting form barriers to entry for small competitors as well as concerns about Appreciable Adverse Effect on Competition (AAEC) under Section 3(1)<sup>32</sup>.

The problem is made even worse by section 4 regarding abuse of dominance. Platforms use sensitive data of consumers to launch certain brands in their recommended list and then use their dominance over search algorithms to give those products more visibility and more purchase possibilities. While this act may showcase preferential listing and denial of market for small competitors which is prohibited under Section 4(2), the CCI has often dismissed the cases citing lack of evidence of dominance. If we look at the case of All India Online Vendors Association vs. Flipkart India Pvt Ltd<sup>33</sup>, CCI rejected claims of using its alleged dominant position and asserted that joint dominance does not fall under the ambit of dominant position in the Indian competition law. But a contradictory ruling was in the Federation of Hotel & Restaurant Associations of India vs MakeMyTrip India Pvt. Ltd.<sup>34</sup>, where CCI found prima facie dominance and directed investigation into preferential listing of OYO rooms.

This enforcement gap in the regulation of CCI shows uncertain regulation around the concept of vertical agreements and platform neutrality. Under Section 3(4),<sup>35</sup> vertical agreements are examined to determine whether they cause an AAEC. This includes looking at factors like market foreclosure, barrier to entry, benefits of consumers and developments in production and distribution. In traditional markets, these factors are usually visible and measurable but in

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<sup>30</sup> Competition Act, 2002, § 3(4) (India).

<sup>31</sup> Competition Commission of India, *Market Study on E-Commerce in India: Key Findings and Observations* (Jan. 2020).

<sup>32</sup> Competition Act, 2002, § 19(3) (India).

<sup>33</sup> All India Online Vendors Ass'n v. Flipkart India Pvt. Ltd., Case No. 20 of 2018 (CCI Nov. 6, 2018).

<sup>34</sup> Federation of Hotel & Restaurant Ass'ns of India v. MakeMyTrip India Pvt. Ltd., Case No. 14 of 2019 (CCI Oct. 28, 2019).

<sup>35</sup> Competition Act, 2002, § 3(4) (India).

digital market this assessment is a bit more complex.

In digital markets, foreclosure does not always come from explicit clauses or restrictive contracts but it can even take light forms like algorithmic ranking system<sup>36</sup>, preferential listing and access to consumer data or even self-preferencing behaviour<sup>37</sup> that act as a disadvantage to several independent and small sellers<sup>38</sup>. These mechanisms may not look exclusionary openly but they significantly shape the outcomes in the market. To prove such a kind of foreclosure is particularly difficult because the platforms are in control of the very information needed to assess it including consumer data. This asymmetry in the information acts as a disadvantage for regulation and the parties involved in the platform as well.

The rule of reason concept<sup>39</sup> existing in the regulation of vertical agreements was designed in a very conventional supply chain in mind where restraints are usually contractual, transparent and sometimes easier to find. But digital vertical agreements operate through technological design rather than transparent contractual restrictions. Hence the source of the anti-competitive behaviour and its effect lie in the platform architecture rather than in written agreements. This structural difference create regulatory gap without clear analytical tools specially for the digital market. The lack of provisions on algorithmic transparency and narrow interpretation of existing provisions on dominance and anti-competitive agreements only allow digital platforms to exploit vertical agreements strategy which end up harming competition for small entities and consumer welfare.

## DEEP DISCOUNTING

One of the most impactful strategies of the Indian digital marketplace has been Deep discounting through which ecommerce platforms sell products at prices much lower than the actual cost. While such low prices can be good for consumers, it is usually limited to preferential arrangements with a small number of preferred sellers who actually benefit from the structural linking to the discounting of the platform or who have an agreement with the platform itself. For example, Amazon extends its private label products exclusively through the affiliated sellers of the platform and Flipkart has also been criticised for giving preference

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<sup>36</sup> Damien Geradin & Dimitrios Katsifis, *The Antitrust Case Against the Big Tech Companies*, 14 J. Competition L. & Econ. 1 (2018).

<sup>37</sup> Pinar Akman, *Self-Preferencing in Digital Markets*, 10 J. Antitrust Enforcement 1 (2022).

<sup>38</sup> Case AT.39740, Google Search (Shopping), Comm'n Decision (June 27, 2017).

<sup>39</sup> Herbert Hovenkamp, *The Rule of Reason*, 70 Fla. L. Rev. 81 (2018).

to some sellers out of all. These practices reduce neutrality in the platform and act as a disadvantage to other sellers and also show predatory pricing characteristics.

The Competition Act 2002 does have provisions that can be used to look at this kind of conduct. Section 3(1) says that agreements which cause an appreciable adverse effect on competition are not allowed. Section 3(4)<sup>40</sup> speaks about vertical agreements such as exclusive supply or distribution arrangements. Section 4 deals with abuse of dominant position and includes unfair or discriminatory pricing. If a platform uses deep discounts in a way that forces sellers to go along with it or shuts out competitors it can be examined under these sections.

The difficulty begins when these provisions are applied to digital markets. The law was framed at a time when most markets were physical and pricing patterns were easier to understand. It did not fully imagine a world where algorithms decide visibility and prices change in real time. Because of this it becomes hard to judge discount based buying behaviour within the older legal structure.

The issues that came up in relation to Zomato and Swiggy<sup>41</sup> show this tension clearly. Many restaurant partners have said in various study that if they did not join heavy discount schemes their visibility on the app would fall and so would their orders. No one was openly forcing them yet the practical pressure was real. In theory such arrangements may be examined under Section 3 if they restrict access to the market. In reality it has been difficult for the Competition Commission of India to clearly separate normal promotional offers from discounting that harms competition.

Consumers are naturally drawn to the idea of getting a good deal. When they see a price slashed from a higher amount they feel they are saving something. Many people do not pause to ask whether the original price was realistic. Platforms like Amazon and Flipkart build entire sale events around this behaviour. The Big Billion Day and the Great Indian Festival are not just sales. They are designed to create excitement urgency and the feeling that missing the offer would be a loss. Smaller sellers often cannot match these price cuts. If they stay out they risk becoming invisible.

In the short run customers enjoy lower prices. That part is easy to see. What is less visible is

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<sup>40</sup> Competition Act, 2002, § 3(4) (India).

<sup>41</sup> National Restaurant Ass'n of India v. Zomato Media Pvt. Ltd., Case No. 79 of 2020 (CCI Apr. 4, 2022).

the long term effect. If only a few large platforms remain strong enough to survive these pricing battles the market becomes less open. New players may think twice before entering. Over time this can reduce real competition even though prices looked attractive at the beginning.

Predatory pricing under Section 4(2)(a)(ii)<sup>42</sup> has usually been understood in a simple way. A firm sells below cost to push rivals out and later raises prices to recover the loss<sup>43</sup>. Courts and authorities in India have often looked at cost measures such as average variable cost to decide whether pricing is predatory. This approach made sense in traditional industries where costs and revenues were easier to calculate.

Digital platforms do not always follow this pattern. Many operate in different segments at once. They may lose money in one area and make profits in another. Some rely on steady investor funding to support low prices for years. Recovery may not happen through a later price increase. It may happen through user data advertising revenue expansion into new markets or by making users dependent on a single ecosystem. In this setting the old idea of raising prices later does not always capture how recovery actually works.

All this puts pressure on the traditional price cost test<sup>44</sup>. If the focus remains only on whether consumers are paying less at the moment deeper changes in market structure can be missed. Strong discounts can quickly shift market share even if the strategy cannot last forever.

At present there is no very clear guidance that separates genuine promotional pricing from exclusionary deep discounting in digital markets. Because of this enforcement often feels uncertain. If the law does not adapt to these changing realities action may come only after the market has already tilted too far in favour of a few dominant platforms.

## **LEGAL AND ENFORCEMENT ISSUES FACED BY CCI**

The Competition Commission of India (CCI), the intended protector of competition through the Competition Act, 2002, has a mandate to undermine monopolistic tendencies, eradicate anti competitive behavior, and protect consumer welfare. However, its track record indicates serious deficiencies in enforcing these regulations in digital markets. The CCI has been labelled

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<sup>42</sup> Competition Act, 2002, § 4(2)(a)(ii) (India).

<sup>43</sup> Patrick Bolton, Joseph F. Brodley & Michael H. Riordan, *Predatory Pricing: Strategic Theory and Legal Policy*, 88 Geo. L.J. 2239 (2000).

<sup>44</sup> *Brooke Grp. Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209 (1993).

as a “paper tiger” by commentators because it has failed to deter enforcement of its statutory mandate, especially in cases of joint dominance, vertical agreements, or deep discounting.<sup>45</sup>

The most significant gap is the absence of joint dominance in Indian competition law. Unlike the European Union, which explicitly deals with collective dominance<sup>46</sup>, Indian law only allows scrutiny for unilateral dominance under Section 4. This has provided space for digital duopolies such as Amazon and Flipkart, or Zomato and Swiggy to jointly exercise a substantial degree of market power in the absence of jurisdictional grounds under the statutory provisions. Consequently, anti-competitive effects arising from tacit coordination<sup>47</sup>, or collaborative market conditioning, remain outside the regulators' sights.<sup>48</sup>

Vertical agreements and preferential arrangements present another challenge. Section 3(4) prohibits vertical restraints such as exclusive supply and resale price maintenance, but the enforcement of this provision has been weak, particularly in digital markets. For example, an investigation by the CCI uncovered that Amazon provided preferential treatment to sellers that it connected through joint ventures. Additionally, Flipkart's Big Billion Day sales demonstrated how preferential treatment could be used to facilitate exclusive supply agreements to amplify levels of deep discounting and limit independent traders' access to consumers. However, enforcement of Section 3 is impacted by a lack of standards to separate permissible promotional strategies from exclusionary practices that are anti-competitive in nature.

Deep discounting also highlights institutional inefficiencies. The CCI has received many complaints from small sellers and restaurant associations regarding predatory pricing and has struggled to exercise its ability to restrict pricing in part because of the ambiguity of statutory definitions. Behavioral economics research demonstrated that platforms can exploit consumer biases, such as loss aversion and anchoring, through events such as Amazon's Great Indian Festival sales. Although these practices may raise issues of predatory pricing under Section 4, the CCI's ability to pursue these practices is limited based on its inability to integrate behavioural insights and algorithmic manipulation into its analysis.

The enforcement deficit is exacerbated by systemic deficiencies. Since 2011, the CCI has

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<sup>45</sup> Pradeep S. Mehta, *Competition Law in India: A Critical Review*, 5 Indian J. L. & Econ. 1 (2014).

<sup>46</sup> Giorgio Monti, *Article 102 TFEU in the Digital Era*, 45 World Competition 215 (2022).

<sup>47</sup> Jean Tirole, *The Theory of Industrial Organization* 239–76 (1988).

<sup>48</sup> Ariel Ezrachi & Maurice E. Stucke, *Sustainable and Unchallenged Algorithmic Tacit Collusion*, 17 Nw. J. Tech. & Intell. Prop. 217 (2019).

levied penalties of ₹18,351 crore but has actually only collected 2.3%,<sup>49</sup> making punishment really not a deterrent. The delayed appeals process, remands from the NCLAT<sup>50</sup>, and court stay orders like *MRF v. CCI*<sup>51</sup> all serve to tangle up the process<sup>52</sup>. An incomplete bench strength and a shortage of expertise in high-profile matters like those involving Google and Apple, also slows matters down. And as we all know, the digital context with its promise of rapid innovation and price competition, can quickly outpace regulators.

Without recognising joint or collective dominance, digital duopolies and oligopolies are likely to continue operating in a legal grey area. In such markets, firms may shape conditions in parallel and influence outcomes in a coordinated manner, yet avoid scrutiny under both Section 3 and Section 4. The law, as it currently stands, struggles to address situations where market power is exercised collectively but without an explicit agreement. The existing statutory framework effectively shields parallel dominance from liability unless there is clear and direct evidence of cartelisation. In digital markets that are mediated by algorithms, such evidence is rarely visible or easily demonstrable. Coordination may occur through data driven responses, pricing algorithms, or structural interdependence rather than overt communication. Requiring proof of traditional cartel conduct in these contexts sets a threshold that is often impractical, leaving significant forms of coordinated market power beyond the reach of enforcement.

These gaps convey that the existing CCI framework, which lacks any express provisions on the issue of joint dominance, objective thresholds for predatory discounting and vertical foreclosure in the digital context is not prepared to address these complicated questions about platform conduct. Without legislative amendment and sufficient enforcement capacity, India's antitrust regime risks arguably prioritizing short-term consumer welfare against the desire to protect for robust, sustainable competition in the market.

## SUGGESTIONS FOR LEGAL REFORMS

Legal reforms are needed to strengthen Indian competition regime and to improve the CCI's ability to regulate the digital markets. This includes strict regulation of joint dominance,

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<sup>49</sup> Standing Committee on Finance (2022–23), *Review of the Competition Commission of India* (Lok Sabha Secretariat Report).

<sup>50</sup> *Competition Comm'n of India v. Bharti Airtel Ltd.*, (2019) 2 SCC 521.

<sup>51</sup> *MRF Ltd. v. Competition Comm'n of India*, (2016) 11 SCC 455.

<sup>52</sup> Maher M. Dabbah, *International and Comparative Competition Law* 724–738 (2010).

vertical agreements, and deep discounting.

#### **a) Recognition of Joint Dominance:**

Section 4 of the Competition Act, 2002 only allows for unilateral dominance to be considered for the prohibition of abuse of dominant position. This leaves a regulatory gap for oligopolistic markets in which entities exercise collective market power such as Amazon and Flipkart or Zomato and Swiggy. A reform to Section 4 to explicitly capture joint or collective dominance would be a significant enactment, as in Article 102 TFEU prohibits not only unilateral but also collective abuse of dominance (United Brands case). Without recognising joint dominance, digital duopolies and oligopolies operate in a legal grey area. Firms can influence market conditions in parallel and exercise coordinated power without falling clearly under Section 3 or Section 4. The current framework requires direct proof of cartelisation, which is often unrealistic in algorithm driven markets where coordination happens through data and technology rather than explicit agreements. As a result, parallel dominance can remain effectively beyond the reach of enforcement. The CCI would thus be able to address tacit collusion, collective control of data, and coordinated conduct that restricts competition in digital markets.

#### **b) Enhancing the Control of Vertical Agreements:**

At present, a vertical agreement is analyzed under a "rule of reason" analysis encapsulated in Section 3(4), which offers little guidance on how to evaluate digitally-related vertical agreements when matters such as exclusive supply arrangements and preferential listings may undermine platform neutrality. Under Article 101 TFEU, the EU developed a clearer framework that India could learn from per its conventional "rule of reason" status. There is a need to develop clear and structured presumptions against certain types of digital vertical restraints. This is especially important in situations involving exclusive supply arrangements, algorithmic search bias, or self preferencing practices. In such cases, the design and functioning of the platform itself can tilt the competitive landscape, and the law should recognise this risk more directly rather than treating these practices as neutral by default. This would give the CCI legitimacy to assess arrangements between platforms and private labels on websites like Amazon, or to determine exclusive arrangements on deals for a Big Billion Day between sellers and Flipkart.

**c) Addressing Deep Discounting, and Predatory Pricing:**

Section 4(2)(a)(ii)<sup>53</sup> describes predatory pricing specifically, but the definition is not sufficient to regulate deep discounting that is a function of the platform's arrangements. Differing from actual predatory pricing, digital platforms will operate at a loss at the expense of future monetization through cross-subsidization and data monetization<sup>54</sup>. Clear legislative guidance on predatory pricing in digital markets is urgently needed. The current framework, built around traditional price and cost comparisons, does not adequately capture the realities of cross subsidisation, data monetisation, and indirect methods of recovering losses. In digital ecosystems, firms may sustain below cost pricing through profits from other segments or by leveraging user data, with recoupment occurring in less visible ways. Without updating the standards to reflect these dynamics, enforcement risks overlooking how predatory strategies actually operate in platform based markets. The doctrine of predatory pricing in the US is traditionally very narrow, however lessons may still be drawn regarding consumer welfare and examining the popularization of long-term foreclosure effects of below-cost pricing. The EU has a stronger basis with its case law to establish a below cost pricing standard of practices and to regulate exclusory provisions intended to drive rival competition from the market. India must reconcile any reform toward an application of a hybrid inquiry aimed at evaluating both price-cost benchmarks, consumer behavior, and exclusionary intent, particularly in the disrupter digital sphere.

**d) Improving Enforcement Mechanisms:**

Reforms must also take on enforcement obstacles. The introduction of a mandatory deposit system for appeal, improved bench strength of the CCI, and technical expertise along with algorithmic proficiencies would lead to an increment in deterrent power. The CCI should be granted ex-ante regulatory power, similar to the approach in the EU's Digital Markets Act<sup>55</sup>, to impose conduct obligations on gatekeeper platforms engaging in persistent anti-competitive behaviour.

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<sup>53</sup> Competition Act, 2002, § 4(2)(a)(ii) (India).

<sup>54</sup> David S. Evans & Richard Schmalensee, *The Industrial Organization of Markets with Two-Sided Platforms*, 3 Competition Pol'y Int'l 151 (2007).

<sup>55</sup> Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on Contestable and Fair Markets in the Digital Sector (Digital Markets Act).

## CONCLUSION

India's digital marketplace has improved in many ways. There are also some pressing gaps in regulation. While the Competition Act, 2002 was written with the intention of combating monopolistic behaviour and ensuring consumer welfare in the marketplace, it has yet to grapple with the idiosyncrasies posed by digital platforms. Some practices exposing gaps in the statutory framework in Section 3, and the capacity of concerns within the economics of competition in Section 4 include unclear definitions of joint dominance, exploitive vertical agreements, and deep discounting. For instance, some have accused large platforms like Amazon and Flipkart of favouring their sellers, and others have linked the effects of Zomato and Swiggy to coercive discounting arrangements. These practices interfere with platform neutrality while diminishing competition and marginalising unconstrained small traders. Existing statutory provisions under Section 3 and 4 provide an inadequate guide for addressing practices taking place in a digital context. This paper concludes that the Competition Act, 2002 faces structural limitations when applied to digital markets. Section 4 does not explicitly recognise joint or collective dominance. This creates a gap in enforcement, particularly in digital oligopolies where firms may exercise coordinated market power without entering into any formal agreement. In such cases, influence over the market can be shared and mutually reinforced but also remain difficult to address under the existing statutory language.

The rule of reason framework under Section 3 which regulates vertical agreements does not adequately regulate new strategic anti-competitive behaviour in digital platforms. Traditional analysis focuses on contractual restraints that are visible and clearly defined. In contrast, digital platforms may engage in self preferencing or subtle forms of bias through algorithmic design and technological architecture. These practices shape market outcomes without relying on explicit contractual exclusion, making them harder to assess within the conventional framework. The current approach to predatory pricing, which relies heavily on traditional price cost benchmarks, does not fully reflect the economic realities of digital ecosystems. Practices such as cross subsidisation, monetisation of user data, and the strategic use of behavioural insights to influence consumer decision making are central to digital business models. Deep discounting in these markets may serve broader strategic goals that extend beyond short term pricing strategies, yet existing doctrine does not always account for these dynamics. Unless legislative reform and a recalibration of analytical tools are undertaken, there is a risk that India's competition regime will continue to prioritise immediate consumer price benefits over

the long term sustainability of market structure. Clearer statutory recognition of joint dominance, more precise standards for assessing digital vertical restraints, and a modernised approach to predatory pricing would be important steps in ensuring competitive neutrality within the digital economy.

**REFERENCES**

1. Lina M. Khan, *Amazon's Antitrust Paradox*, 126 Yale L.J. 710 (2017).
2. Jean-Charles Rochet & Jean Tirole, *Platform Competition in Two-Sided Markets*, 1 J. Eur. Econ. Ass'n 990 (2003).
3. David S. Evans & Richard Schmalensee, *The Industrial Organization of Markets with Two-Sided Platforms*, 3 Competition Pol'y Int'l 151 (2007).
4. Mark Rysman, *The Economics of Two-Sided Markets*, 23 J. Econ. Persp. 125 (2009).
5. Ariel Ezrachi & Maurice E. Stucke, *Artificial Intelligence & Collusion: When Computers Inhibit Competition*, 2017 U. Ill. L. Rev. 1775.
6. Ariel Ezrachi & Maurice E. Stucke, *Sustainable and Unchallenged Algorithmic Tacit Collusion*, 17 Nw. J. Tech. & Intell. Prop. 217 (2019).
7. Patrick Bolton, Joseph F. Brodley & Michael H. Riordan, *Predatory Pricing: Strategic Theory and Legal Policy*, 88 Geo. L.J. 2239 (2000).
8. William J. Baumol, *Predation and the Logic of the Average Variable Cost Test*, 39 J.L. & Econ. 49 (1996).
9. Herbert Hovenkamp, *The Rule of Reason*, 70 Fla. L. Rev. 81 (2018).
10. Damien Geradin & Dimitrios Katsifis, *The Antitrust Case Against the Big Tech Companies*, 14 J. Competition L. & Econ. 1 (2018).
11. Nicolas Petit, *The Oligopoly Problem in EU Competition Law*, 53 Common Mkt. L. Rev. 331 (2016).
12. Steven C. Salop, *Invigorating Vertical Merger Enforcement*, 127 Yale L.J. 1962 (2018).
13. Einer Elhauge, *Tying, Bundled Discounts, and the Death of the Single Monopoly Profit Theory*, 123 Harv. L. Rev. 397 (2009).

14. Daniel Kahneman & Amos Tversky, *Prospect Theory: An Analysis of Decision Under Risk*, 47 *Econometrica* 263 (1979).
15. George J. Stigler, *A Theory of Oligopoly*, 72 *J. Pol. Econ.* 44 (1964).
16. Manav Thakkar & Om Shukla, *A Study of E-Commerce Companies on the Behavioural Economics of Discounting*, 4 *Indian J.L. & Legal Rsch.* 1 (2022).
17. Achint Nigam, Prem Prakash Dewani & Abhishek Behl, *Exploring Deal of the Day: An E-Commerce Strategy*, 27 *Benchmarking: An Int'l J.* 2807 (2020).
18. Jayant Kashyap, *Ensuring Fair Competition and Innovation in India's E-Commerce Sector: The Role of Competition Commission of India (CCI)*, 5 *Indian J.L. & Legal Rsch.* 1 (2023).
19. Shashank S. Katagar, *Digital Merger and Its Challenges to the Competition Law: Indian Laws*, 2 *LawFoyer Int'l J. Doctrinal Legal Rsch.* 43 (2024).
20. Samyukta Rawat, *Collective Dominance: Clamant Need of Indian Competition Law*, 2 *Indian J.L. & Legal Rsch.* 1 (June–July 2021).
21. N. Nganthoybi Singha, *Dominant Position and Its Abuse: A Comparative Analysis of Competition Law in India and the US*, 5 *Indian J.L. & Legal Rsch.* 1 (2023); *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001); *Shri Google LLC v. Competition Comm'n of India*, Case No. 07 of 2012 (CCI Oct. 25, 2022).
22. Shrishti Verma, *Critical Analysis of the Role of the Competition Law in the Sphere of the Digital Economy*, 4 *Indian J.L. & Legal Rsch.* 1 (2022–2023).
23. Christopher Thompson et al., *Modelling the Future Opportunities for Deep Discount Food Retailing in the UK*, 22 *Int'l Rev. Retail, Distribution & Consumer Rsch.* 143 (2012).
24. Aakash Kumbhat, *Google and the Evolution of CCI's Online Platform Market Definition Analysis*, 4 *Indian L. Rev.* 301 (2020).
25. Vikas Kathuria, *Platform Competition and Market Definition in the US Amex Case:*

Lessons for Economics and Law, 15 Eur. Competition J. 254 (2019); Ohio v. Am. Express Co., 138 S. Ct. 2274 (2018).