
EXCLUSIONARY DOMINANCE IN DIGITAL PLATFORM MARKETS - A COMPARATIVE ANALYSIS OF INDIA AND EU

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ABSTRACT

Digital Platform Markets, in the modern era, have become the dominant players in the economy. Their influence in reshaping industries, consumer choices and business opportunities is growing massively by the day. Thereon, concerns have rapidly risen over potential and actual exclusionary conduct, and abuse of dominance by such platforms, posing several risks to innovation, competition and consumer welfare. Thus, the research paper conducts comparative analysis of how such concerns are addressed by two different jurisdictions- India and EU. The study aims to enlighten upon the effectiveness of both in tackling such exclusionary conduct, and recognizing novel forms which may fall outside traditional concepts of Competition law. It further aims to highlight the challenges faced by each jurisdiction.

Research Question: What are the major challenges faced by competition authorities in India and the EU in identifying and remedying exclusionary conduct by dominant digital platforms? How have the authorities addressed these challenges?

Research Method: Doctrinal Research and Comparative Analysis.

Keywords: digital platform markets, exclusionary abuse, competition law, comparative analysis, regulatory frameworks.

Introduction

- A. The relevance of Digital Platform Markets: In the new era of digital economies, digital platform markets have evolved and emerged as powerful driving forces of innovation, commercial growth and connectivity. Such multi-sided platforms have helped in accommodating interactions and connectivity between a plethora of user groups, for examples, consumers, sellers, advertisers, service providers, etc. Such companies have created vast ecosystems which continue to shape daily lives of the common people, as well as forming a substantial stake in global economy.
- B. The Concern of Exclusionary Abuse of Dominance: It is pertinent to note that such extensive and unstoppable growth of such digital platform markets have ensued certain conduct which may constitute potentially exclusionary practices. This is construed to be ‘abuse of dominance’ when addressed in terms of conventional Competition Law. These concerns are significant as they may result into the stifling of innovation and stagnation of growth of certain competitors. This, in the long run, results in harming the consumers’ interests by limiting their choices, and thus, falls within the ambit of Competition Law.
- C. Potential Harms of Exclusionary Conduct: There are several associated harms with the phenomena of exclusionary abuse of dominance in digital platform markets. As mentioned, the harms include hindering unfairly, the growth of other competitors, which stifles innovation and limits the consumer choices. There is a severe lack of interoperability, and there are increased instances of self-preferencing. These do not fit within the conventional methods of determining abuse of dominance, as they may not depict any immediate price deviations, yet they have overbearing effects on the competition as well as the economy in the long run.
- D. Legal Frameworks in India and The European Union: In the context of competition law, the concerned legislation in India is the Competition Act, 2002. This act gives a wide range of powers and duties to the Competition Commission of India, utilizing which the Commission maintains oversight on the fair and level-playing competition in all industries and markets. In specific,

Section 4 of the Act deals with ‘Abuse of Dominance’ and the same has been evaluated as to whether it effectively regulates digital platform markets. On the flip side, the EU has three legislations for addressing competition and fair practices within the Digital platform markets- Article 102 of the Treaty on the Functioning of the European Union, Digital Markets Act, and Digital Services Act. These legislations aim to effectively and specifically address concerns regarding competition in the Digital space.

E. Research Objective: In the said context, the research aims to analyse key challenges that are faced by the competition law enforcement agencies in the Indian as well as the European jurisdictions, whilst addressing the exclusionary abuse of dominance in platform markets. The objective is to examine and elucidate upon how the jurisdictions have approached the same problem with different methods, and how the conventional topics of Competition law are being interpreted and applied into the digital platform markets.

Challenges in Addressing Exclusionary Abuse of Dominance in Digital Platform Markets

A. Definition of Relevant Markets in Multi-Sided Platforms: The conventional definition of a marketplace, is not adequately descriptive of the intricacies of a digital platform market. It is extremely important to consider and rightfully define the term ‘digital platform markets’ as the conventional definitions of markets do not cover the complexities of multi-sided digital platforms¹. Such platforms connect different user groups such as buyers and sellers. There may be little scope of the existence of competition within each group of such platforms but not directly between them. Thus, this enunciates challenge for competition law enforcement agencies as to how the relevant market needs to be defined, how to accurately assess platform’s overall dominance and the dynamics of competition across different user groups².

¹ Thomas Höppner, 'Defining Markets for Multi-Sided Platforms: The Case of Search Engines' (August 15, 2015) 38 World Competition, Issue 3, pp. 349-366, available at SSRN: <https://ssrn.com/abstract=3040557>.

² M. Chawdhry, 'Determining the Relevant Market for Digital Multi-Sided Platforms' (Issue No. 013, 2021) Esya Centre. Retrieved from Esya Centre.

Possible Solutions include adoption of a two-sided market definition that may consider user groups simultaneously, or using a function-based market definition that focuses on the core service provided by the platforms³. Such approach may help the competition law regulatory authorities to comprehend the platforms, their competitive positioning and any potential exclusionary conduct that may be harmful to fair and healthy competition.

B. Assessment of Dominance in the era of Network Effects: The Digital Platform Markets are often observed to reap the benefits of powerful network effects, since the value of the platform increases as more users join⁴. This may result in the creation of a “tipping point” wherein a dominant platform becomes increasingly difficult to compete with and even becomes resilient to any changes of supply and demand. It is pertinent to note that this occurs even without the platform acquiring or holding a majority share of the market in their respected avenues. In addition to the same, dominant platforms may use their enormous datasets in order to strengthen their market position. The major concern for competition regulatory authorities is the assessment of dominance beyond the concepts of traditional market share metrics. The said problem warrants modern and technology-driven solutions such as switching costs, user lock-in and access to essential data. Another key aspect for the authorities to examine is to assess the volume of influence that a platform may exercise, even as against the market conditions of demand and supply⁵.

C. Recognition to the Novel forms of Exclusionary Conduct: One other critical aspect in lieu of digital platform markets, is that such platforms may go beyond the conventional anti-competitive practices such as predatory pricing, exclusive dealing⁶. In addition to that, such platforms encompass the ability to engage in

³ Caio Mario da Silva Pereira Neto and Filippo Lancieri, 'Towards a Layered Approach to Relevant Markets in Multi-Sided Transaction Platforms' (January 28, 2020) *Antitrust Law Journal* 82(3), 701, available at SSRN: <https://ssrn.com/abstract=3408221> or <http://dx.doi.org/10.2139/ssrn.3408221>.

⁴ Tone Knapstad, 'Digital dominance: assessing market definition and market power for online platforms under Article 102 TFEU' (08 Nov 2023) *European Competition Journal*, DOI: 10.1080/17441056.2023.2280334.

⁵ S. Hermes et al., 'Digital Platforms and Market Dominance: Insights from a Systematic Literature Review and Avenues for Future Research' (2020) *Proceedings of the 24th Pacific Asia Conference on Information Systems (PACIS 2020)*.

⁶ Vikas Kathuria and Jure Globocnik, 'Exclusionary conduct in data-driven markets: limitations of data sharing remedy' (November 2020) *Journal of Antitrust Enforcement*, 8(3), pp. 511–534, DOI: 10.1093/jaenfo/jnz036.

manipulation of algorithms, which may favour their own services over the services of the other competitors. They may provide preferences to their platform-oriented services, which may also harm the competition. There may be other practices such as data hoarding, limited interoperability, which may effectively prevent and exclude competitors from integrating with the dominant platform, effectively denying any market presence⁷. Thus, the current competition law regulators are also tasked with the responsibilities of identifying as well as curtailing such practices to ensure fair competition and target the novel methods of exclusion. There is a serious concern and need for the current legislations to be reviewed and notify new guidelines for the regulation and restriction of such practices⁸.

D. Analysis of Indirect Anti-Competitive Effects: The effects of exclusionary conduct by the dominant digital platforms may not be easily quantified⁹. The anti-competitive effects may not always be immediate, as the platforms may hinder the entry as well as the growth of their competitors. This has a long-term negative impact on the market, even when no immediate price deviations or other direct observable harms cannot be seen¹⁰. This further impacts the consumer welfare, as there are factors such as stifled innovation, limited choices and reduced privacy options. The challenge, thus, for the competition law regulators lies in the analysis of these indirect effects, which although may not be completely visible in the hindsight, yet have deteriorative effects on the competition in the long run¹¹. There is hence, a dire need for the close perusal of such indirect and anti-competitive effects, and potential answers to the same

⁷ Vikas Kathuria, 'Greed for Data and Exclusionary Conduct in Data-driven Markets' (December 4, 2018), An updated version features in Computer Law & Security Review (2019) 35(1), pp. 89-102, available at SSRN: <https://ssrn.com/abstract=3295436>.

⁸ S.M. Chowdhury and S. Martin, 'Exclusivity and exclusion on platform Markets' (2017) 120 Journal of Economics 95–118, DOI: 10.1007/s00712-016-0499-z.

⁹ J. Ma, 'Market Power Assessment in Online Markets' (2022) in *Regulating Data Monopolies*, (Springer, Singapore), DOI: 10.1007/978-981-16-8766-2_7.

¹⁰ Arto Ojala and Kalle Lyttinen, 'How do entrepreneurs create indirect network effects on digital platforms? A study on a multi-sided gaming platform' (2022) 36 *Technology Analysis & Strategic Management* 1-16, DOI: 10.1080/09537325.2022.2065977.

¹¹ T. Raychaudhuri, 'Abuse of Dominance in Digital Platforms: An Analysis of Indian Competition Jurisprudence' (2020) 1 *Competition Commission of India Journal on Competition Law and Policy*, 1–27, DOI: 10.54425/ccijoclp.v1.5.

may be economic modelling, dynamic analysis of the competition, and consideration of evidence of suppression of innovation as well as competitors.

E. Shortcomings of Traditional Frameworks and The Need for a Tailored Approach: The current legislative frameworks may not be fully and adequately equipped to serve as solutions to address the complex problems of digital platform markets and their possible anti-competitive practices¹². The mere reliance on the metrics of market share may not be the sole and viable criteria to check on the fairness of competition around such platforms. As has been mentioned, such conventional matrices are not capable enough to detect and determine the novel and complex problems that are created by anti-competitive digital platform markets¹³. Such shortcomings warrant a tailor-made and specialized approach towards the regulation of competition in the digital context, especially addressing the exclusionary dominance.

There is hence, a need for a more nuanced approach considering the specific characteristics of the digital platforms, such as sector-specific regulations or competition law interpretations tailored to the digital environment. There are several theories of harm, such as foreclosure effects, network effects, which are crucial in analysing the impact of exclusionary conduct by dominant digital platforms.

The Indian Approach to Addressing Exclusionary Abuses

A. Relevant Provisions of the Competition Act, 2002: The most relevant section in context of 'Abuse of Dominance' under the Indian Competition Laws is Section 4 of the Competition Act, 2002. It is pertinent to note that the Indian Competition Law Jurisprudence has evolved in a manner whereby, from the objective of 'restricting monopolies', the current laws do not *prima facie* recognize monopolies or dominant share as wrong. Thus, merely having a

¹² Jan Kraemer et al., 'Digital Markets and Online Platforms: New Perspectives on Regulation and Competition Law' (November 18, 2020), available at SSRN: <https://ssrn.com/abstract=3733346> or <http://dx.doi.org/10.2139/ssrn.3733346>.

¹³ M.L. Entin, E.G. Entina, and D.V. Galushko, 'Cost of Exclusion, a New Measure of Platform Dominance' (2022) in *The Platform Economy*, edited by M.I. Inozemtsev, E.L. Sidorenko, Z.I. Khisamova (Palgrave Macmillan, Singapore), DOI: 10.1007/978-981-19-3242-7_22.

dominant position in the market is not considered wrongful or illegal, but the moment it is adjudged that the dominance is being misused to create entry barriers, or make actions which may harm competitions, then it becomes 'abuse' of dominance under Section 4. As per the jurisprudence, the abuse is prohibited under the Competition Act, and two elements are majorly concerned with the same; firstly, the enterprise may be operating independently of competitive forces prevailing in the relevant market and secondly, it must affect their competitors and consumers or the relevant market in its favour¹⁴.

Any practise that causes any exclusionary and exploitative effects on the competition also constitutes 'abuse of dominance' under this section. Exclusionary practices have the potential to create unfair entry barriers which harms the competition by limiting the number of competitors. It further contributes to limitations to the consumer choices, and thus it negatively affects both the competitors as well as the consumers. There has been some judicial interpretations to the Exclusionary practices in lieu of abuse of dominance, wherein the same has been held to be contravening the provisions of Competition Act, 2002¹⁵.

B. The CCI's Approach to Exclusionary Abuses in Digital Platforms: The Competition Commission has been actively monitoring the instances of abuse of dominance and other exclusionary practices, and has taken proactive actions against the enterprises or digital platforms¹⁶. Notably, there is no consistent approach that the Commission is following when it comes to the determination of relevant market. For instance, in the case of *MakeMyTrip*, which was related to hoteliers, the perspective adopted for the determination of relevant market was single-market. Whereas in the case of *Lifestyle Equities CV v. Amazon*, the Commission considered network effects on the e-commerce and telecom and thus, applied the multi-sided market approach. This has a remarkable effect on

¹⁴ Payal Malik, Neha Malhotra, Ramji Tamarappoo, and Nisha Kaur Uberoi, 'Legal Treatment of Abuse of Dominance in Indian Competition Law: Adopting an Effects-Based Approach' (2019) 54(2) *Review of Industrial Organization* 435–464, available at <https://www.jstor.org/stable/48702964>.

¹⁵ *Flipkart Internet Pvt. Ltd. and Ors. vs. Competition Commission of India and Ors.*, MANU/KA/3124/2021.

¹⁶ Aashna Singh, 'A Veiled Relevant Market: Study of the Digital Markets Under the Indian Competition Law' (March 20, 2024), available at SSRN: <https://ssrn.com/abstract=4766049> or <http://dx.doi.org/10.2139/ssrn.4766049>.

the scenarios, because of the fact that determination of relevant market plays a very crucial role in the process of assessment of abuse of dominance, and any exclusionary abuse of dominance. Another landmark in lieu of the same context may be the case of Google¹⁷, whereby the Commission not only recognised the exclusionary policies, *inter alia*, and penalised the same. Thus the approach shown by the Commission differs on a case-to-case basis, considering the unique dynamics of platform markets. The Commission is sought to have adapted the traditional competition law concepts, and thereby identifying exclusionary conduct in a manner that captures both single-sided as well as multi-sided natures of these platforms. The Commission has further implemented the use of newer models to inculcate dynamic analysis, which in itself is a positive development, when it comes to the assessment of the exclusionary practices in the Digital Market Platforms.

C. Addressing the Identified Challenges: The primary challenge in the determination of relevant marketplace, the Competition Commission may have to consider several factors such as cross-group network, user switching costs, and the platform's core functionalities. This is because their conventional metrics of evaluation, such as relevant product markets, or relevant geographical markets. This would enable the Commission to better capture the competitive dynamics within the platform ecosystem. In the assessment of dominance, the Commission will now be required to look beyond the conventional market share metrics, and thereon evaluate the platform's ability to act independently of competitive forces, their control over essential resources such as data¹⁸, and the existence of significant barriers to entry and expansion¹⁹. The Commission has further employed the methodologies such as economic analysis, consideration of harm to innovation, consumer choice and privacy, rather than focusing only on price deviations.

¹⁷ XYZ(*Confidential*) and Ors. v. Alphabet Inc. and Ors. MANU/CO/0091/2022

¹⁸ Koren Wong-Ervin, 'Assessing Monopoly Power or Dominance in Platform Markets' (January 26, 2020), available at SSRN: <https://ssrn.com/abstract=3525727> or <http://dx.doi.org/10.2139/ssrn.3525727>.

¹⁹ J. Veisdal, 'The dynamics of entry for digital platforms in two-sided markets: a multi-case study' (2020) 30 *Electronic Markets* 539–556, DOI: 10.1007/s12525-020-00409-4.

D. Recent Developments: The very recent developments in the promotion of fair and healthy competition in the context of digital platform markets have been enunciated upon in The Committee on Digital Competition Law Report²⁰. The Committee was constituted to evaluate the need for ex-ante competition framework for digital markets in India²¹. The report, *inter alia*, highlights necessary recommendations to acknowledge and address the rising concerns over the Competition within the Digital space. The draft bill has talked about a new class of enterprises, namely SSDEs. The term stands for Systematically Significant Digital Enterprises, which are digital enterprises that wield substantial influence and have a significant impact on digital markets. Typically, these will be entities which offer core digital services such as search engines, social networking platforms, operating systems, and web browsers. Further, the draft Bill also empowers the Director General of the Competition Commission to investigate any contraventions. The recommendations further entail that the Commission must strengthen its technical capacity for the early detection and disposal of cases. There are also recommendations that civil penalties must be imposed for contraventions in context of digital platform markets. This is due to the decriminalisation of various corporate offences by the Government, in order to promote the ease of doing business. There are many obligations that would be imposed on the SSDEs such as prohibition of anti-competitive practices. These include favouring their own products, restricting users for third-party applications, etc.

The EU Approach to Addressing Exclusionary Abuses

A. Abuse of Dominance under the TFEU: The framework of the European Commission's Competition law is established under the Treaty of Functioning of the European Union, which was enacted in the year 2009. Articles 101 to 109 of the Treaty deals with the subject of Competition Law. Precisely, it is Article

²⁰ Ministry of Corporate Affairs, Government of India, Report of the Committee on Digital Competition Law (27 February 2024)

²¹ Shilpi Bhattacharya and Pankhudi Khandelwal, 'Indian Competition Law in the Digital Markets: An Overview of National Case Law' (July 29, 2021), available at SSRN: <https://ssrn.com/abstract=3897291> or <http://dx.doi.org/10.2139/ssrn.3897291>.

102 of the Treaty²² that deals with the phenomena of ‘abuse of dominance’ which is defined as an undertaking in a dominant position, wherein it exerts significant influence on the market, without facing effective competition. It is pertinent to note that market share is one of the factors, but it is not the sole factor for the assessment of abuse of dominance. Notably, holding a major market share in itself does not constitute any unlawful conduct, howsoever, the usage of such influence to unfairly stifle entrance and expansion plans. It is further notable that Article 102 of the TFEU focuses on exclusionary abuses that harm competition. The same concept covers various versions of exclusionary conduct such as imposing unfair trading conditions, limiting production or technical development, and so on. Therefore, the assessment of abuse involves analysing the dominant firm’s conduct and its potential to limit the competitors.

B. The European Commission’s Approach to Digital Platforms: The European Commission (hereinafter abbreviated as ‘EC’) is the executive arm of the European Union. The EC is responsible for competition law enforcement, and has thereby been actively investigating and addressing exclusionary abuses by dominant digital platforms. The EC has adopted a proactive approach, which has relied on extensive market investigations, economic analyses²³, and application of established legal principles to the digital context. Thereby, in the assessment of such dominance, the EC considers traditional factors like market shares and barriers to entry and expansion, whilst also balancing specific characteristics of digital platforms, which may include network effects, multi-sided markets, and control over data and user access. The EC, along with these measures, aims to encourage responsible behaviour from platform operators. This entails promotion of transparency in algorithms, protection of user privacy, and prevention of illegal content. With regards to the same, the EC actively

²² Monti, Giorgio and de Strel, Alexandre, Exploitative Abuses: The Scope and the Limits of Article 102 TFEU (November 9, 2023). Robert Schuman Centre for Advanced Studies Research Paper No. 2023_62, Available at SSRN: <https://ssrn.com/abstract=4630871> or <http://dx.doi.org/10.2139/ssrn.4630871>

²³ Michael Roy Baye and Jeffrey Prince, 'The Economics of Digital Platforms: A Guide for Regulators' (November 11, 2020), The Global Antitrust Institute Report on the Digital Economy 34, available at SSRN: <https://ssrn.com/abstract=3733754> or <http://dx.doi.org/10.2139/ssrn.3733754>.

applies the existing competition laws to address the abuses of dominance by large digital platforms²⁴.

C. The Two Digital Legislations: The European Union has taken a two-pronged regulatory approach to address the concerns as raised due to the large digital platforms and online gatekeepers. Therefore, the European Union, in addition to the Article 102 of the TFEU, has introduced two new laws to complement and specifically address the same: the Digital Markets Act (hereinafter abbreviated as 'DMA') and the Digital Services Act (hereinafter abbreviated as 'DSA').

The Digital Markets Act is a landmark regulation which specially aims to promote fair and healthy competition among the digital market platforms by regulating the conduct of large online platforms²⁵. The said platforms have been designated as 'gatekeepers'. The DMA enforces a set of ex-ante regulations and obligations that the designated gatekeepers must comply with. It deals with several aspects of the Digital Platform Markets, such as Self-preferencing and Fair treatment of business users, Data Access and Portability, Interoperability, and Anti-circumvention measures²⁶. Thus, DMA is formulated with the intention to complement and not replace the existing provisions of Competition law.

Further, to strengthen and complement the functioning of DMA, the Digital Services Act has been enacted. It is a horizontal framework which aims to create an accountable online environment, The Act addresses issues such as illegal content, transparency requirements, and content moderation practices²⁷. Thus, the three-fold regulation of Competition in the Digital Platform Markets, aims

²⁴ Frederic Jenny, 'Competition Law Enforcement and Regulation for Digital Platforms and Ecosystems: Understanding the Issues, Facing the Challenges and Moving Forward' (June 1, 2021), available at SSRN: <https://ssrn.com/abstract=3857507> or <http://dx.doi.org/10.2139/ssrn.3857507>.

²⁵ J. Veisdal, 'The dynamics of entry for digital platforms in two-sided markets: a multi-case study' (2020) 30 Electron Markets 539–556, DOI: 10.1007/s12525-020-00409-4.

²⁶ Nicolas Petit, 'The Proposed Digital Markets Act (DMA): A Legal and Policy Review' (May 11, 2021), available at SSRN: <https://ssrn.com/abstract=3843497> or <http://dx.doi.org/10.2139/ssrn.3843497>.

²⁷ Sebastian Felix Schwemer, 'Digital Services Act: A Reform of the e-Commerce Directive and Much More' (October 10, 2022), prepared for A. Savin, Research Handbook on EU Internet Law (2022), available at SSRN: <https://ssrn.com/abstract=4213014> or <http://dx.doi.org/10.2139/ssrn.4213014>.

to strike a balance between promotion of innovation, competition and ensuring consumer protections and societal concerns.

Comparative Analysis: India and The European Union

A. Contrast in Approaches: Both India and EU recognise the unique challenges that are being posed by the digital platforms and the need to adapt traditional competition law frameworks in order to effectively address the exclusionary abuses and conducts by these platforms. There are, however, notable and remarkable differences between the respective approaches that have been employed to address the said concerns.

The approach adopted by the European Union is based on not only their premier competition law legislation, that is, the TFEU, but also on specified legislations such as the Digital Markets Act, and the Digital Services Act²⁸. Thus, the European Union has created their own specific legislation which has the sole purpose of attending to competition within the Digital space. Both the legislations, whilst being complementary to each other, recognise the limitations of solely relying on the TFEU, and thereby establish ex-ante rules for the large online platforms designated as gatekeepers²⁹. This seeks to prohibit and prevent exclusionary conduct by mandating interoperability with rivals, fair access to data, and transparency in algorithms.

On the flip side, the Indian approach to the concerns raised due to the exclusionary practices by the digital market platforms is still evolving. The only legislation concerned with competition in the Digital Platform Markets is the Competition Act itself³⁰. This suggests that there is no specific legislation as of now to address the concerns. It is still, pertinent to note that the Competition

²⁸ Sophia Catharina Gröf, 'Regulating BigTech: An Investigation on the Admissibility of Article 114 TFEU as the Appropriate Legal Basis for the Digital Markets Act based on an Analysis of the Objectives and Regulatory Mechanisms' (May 10, 2023), available at SSRN: <https://ssrn.com/abstract=4549209> or <http://dx.doi.org/10.2139/ssrn.4549209>.

²⁹ A. Andreangeli, 'The Digital Markets Act and the enforcement of EU competition law: Some implications for the application of Articles 101 and 102 TFEU in digital markets' (2022) 43(11) European Competition Law Review 496-504. [online] Available at: <https://uk.westlaw.com/Document/I72830F00450811ED8A0C84EBFC03863E/View/FullText.html>

³⁰ V. Sinha and S. Srinivasan, 'An integrated approach to competition regulation and data protection in India' (2021) 9 Computer Science & Information Technology 151–158, DOI: 10.1007/s40012-021-00334-7.

Commission has adopted a flexible approach, while adapting and applying traditional competition law concepts to the digital context. The Commission has, therefore, adopted a case-to-case basis approach, which might aid flexibility, but may also be more time-consuming as it requires extensive examination of every case. One notable legislative development in the same regard is the draft Digital India Bill, which aims to focus on the digital competition in India and its regulation.

B. Similarities: India and the European Union demonstrate different approaches in addressing exclusionary abuses in digital platforms, there are certain similarities, particularly in the recognition of challenges³¹. It is pertinent to note that both India and the EU have acknowledged the limitations of traditional market metrics whilst the assessment of abuse of dominance and exclusionary conduct in the digital platform markets. The traditional tools of analysis may focus on a single product or service market, but the same may not be useful as the Digital platforms operate in multi-sided markets with distinguished user groups. Thus the common concept of single-sided market is not applicable in these scenarios. Howsoever, it is pertinent to note that in the recent jurisprudence, both India and the EU have recognized the need to move beyond traditional market share metrics when assessing dominance and exclusionary conduct in digital markets³². Thereon, both India and EU are focusing increasingly on the long-term anti-competitive effects of exclusionary conduct and not merely price rise or price deviations. This entails that both immediate and long-term concerns are being addressed. For instance, the European Commission considered several factors such as control over valuable user data and ability to self-prefer own shopping services in the Google case. Similarly, The Competition Commission of India considered not only high market shares,

³¹ Douwe Korff, 'The Indian Digital Personal Data Protection Act, 2023, viewed from a European Perspective' (October 27, 2023), available at SSRN: <https://ssrn.com/abstract=4614984> or <http://dx.doi.org/10.2139/ssrn.4614984>.

³² Pinar Akman, 'Regulating Competition in Digital Platform Markets: A Critical Assessment of the Framework and Approach of the EU Digital Markets Act' (December 1, 2021) 47 European Law Review 85, available at SSRN: <https://ssrn.com/abstract=3978625> or <http://dx.doi.org/10.2139/ssrn.3978625>.

but also the alleged exclusive dealing arrangements with hotels in the MakeMyTrip case.

C. Key Takeaways: Therefore, after a close perusal and examination of the Competition law policies and approaches, the following may be the key takeaways and major differences:

- **Ex-Ante v. Ex-Post:** Whilst one may recognize that the European Union's Digital Market has introduced ex-ante rules, which may help in the proactive prevention of exclusionary conduct, the Indian legislation relies majorly on ex-post enforcement through the interpretations of Section 4 of the Competition Act, by the Competition Commission. This implies that the reaction to the cases comes after the potential harm has occurred.
- **Specificity v. Flexibility:** The Digital Markets Act has provided clear, specific regulations for the regulation of Digital Market Platforms which provides specific guidelines and consistency in the interpretation and application of law and policy. Indian legislation, on the other hand, is not specific, and seems to provide certain flexibility for the Commission to apply different approaches on a case-to-case basis. However, the same may result in inconsistency.
- **Stage of Evolution:** Whereas the European Union has created a comprehensive framework with three different legislations. This seems to portray legislative depth and therefore there are codified and consistent rules. However, the legislative developments in India in regards to the regulation of competition in digital platforms are still budding. The recent committee reports as well as the draft Digital India bill, could be seen to be potential roadmaps for future legislative developments³³.

³³ Gaurav Somenath Ghosh and Subhashish Gupta, 'Ex-ante Regulation in Digital Markets in India: Some Practical Considerations' (June 27, 2023), IIM Bangalore Research Paper No. 683, available at SSRN: <https://ssrn.com/abstract=4492393> or <http://dx.doi.org/10.2139/ssrn.4492393>.

Conclusion

In conclusion, the research has highlighted the dire need for comprehensive strategies to curtail exclusionary abuse of dominance in the digital platform markets. Whereas these platforms have gained massive utility and popularity among the users, they equally pose challenges in maintaining fair and healthy competition practices. They also have the potential to stifle innovation and consumer choices, through the imposition of long-term entry and expansion barriers.

The comparative analysis of the Indian and European approaches in addressing the afore-stated concerns provides significant insights upon the complexities existing in the regulation of competition as well as fair trade practices within the digital markets. The European Union's three-fold approach offers a thorough and specific approach, which may encounter challenges of procedural efficiency as well as effectiveness. Conversely, while examining the Indian approach, one may find that there is only one premier legislation, that is, the Competition Act, which has been the only concerned legislation in the said regard. Thus, the approach is not specific like the European approach, but offers more flexibility and allows the formulation of tailor-made and case-to-case methods. It may, however, face the challenge of lack of specificity, to effectively address dynamics of digital markets.

Thereon, for further legislative developments, policymakers and competition law enforcement agencies must resort to prioritization of adaption in continuous manner. There is a serious need to utilize modern approaches such as economic analyses, dynamic assessments, and understanding of the unique characteristics of the challenges posed by the digital markets.