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# IMPLICATION OF SELF-PREFERENCING ON THE COMPETITION & CONSUMER WELFARE

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Rohinikrishna Nair, Manipal Academy of Higher Education

Giri Sankar, Manipal Academy of Higher Education

## ABSTRACT

Currently we are living in a technologically advance era where the repercussions are often overlooked by the expediency. The digital platforms, (like e-commerce platforms Amazon or social media platforms like Instagram) takes up the crucial role in advertising, ensuring businesses reach their diverse target audience with the help of algorithms. Unlike traditional media, digital platforms offer flexibility in advertisement placement, format and targeting resulting in escalated growth in engagement and conversion rates. Additionally, it is also a cost-effective method. With the digital sector projected to contribute 20% of India's GDP by 2026<sup>1</sup>, regulatory frameworks like Draft Digital Competition Bill 2024 aim to curb anti-competitive practices. However, the major concern for regulators as well as policymakers is the existing practice of self-preferencing and the blanket ban which has been proposed in the bill that might adversely impact the innovation, market dynamics and consumer welfare. This is an act of dominance where the firm is promoting or favouring its own goods or services (often vertically integrated) over those of competitors leveraging the market power to do so. It is challenging for regulators to distinguish between self-promotion and self-preferencing. While the findings might reveal that the practice of self-preferencing is harmful and distorting the competition overly restrictive regulations might impact the growth in a sector crucial to India's economic attributions. This research study is specifically focusing on the extent, impact and implications on the competition, product innovation and welfare of the consumers.

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<sup>1</sup> NUALS Law Journal, 'Draft Digital Competition Bill 2024: A Case Against the Blanket Ban on Self-Preferencing' (27 January 2025) <https://nualslawjournal.com/2025/01/27/draft-digital-competition-bill-2024-a-case-against-the-blanket-ban-on-self-preferencing/> accessed 20<sup>th</sup> May 2025

## INTRODUCTION

The Big Five technology companies- Google, Meta, Amazon, Apple & Microsoft has allegedly raised significant speculations about their engagement in the practice of self-preferencing as they are dominant firms. Prioritizing or favouritism might lead to increased efficiency and better consumer experiences. For example, platforms may easily integrate their services, providing users with more coherent and dependable experience. Furthermore, this encourages innovating through providing platforms to launch new goods that is demanding established market offerings to rivals. This practice could in a way benefit the consumers by providing ample choices in less price and elevating the competitive edge on leading brands & enterprises. The primary concern that a consumer would be facing is whether the practice of self-preferencing actually distorting the competition by limiting consumer choice or if it is for the betterment of consumers.

## LITERATURE REVIEW

The authors Edelman and Geradin (2018)<sup>2</sup> showcased through their research that, Google's search ranking changes led to decreased traffic to competing services, which had an adverse effect on consumer's choices. This was also highlighted in 2017 Google's case brought in the attention by European Commission, the company favoured its own comparison-shopping service over its competitors.

In a research paper it was emphasized by the authors that, the repercussions of self-preferencing's welfare will depend on the type of technique and the market setting in which it takes effect<sup>3</sup>.

According to research, platform control over exposure and biased ranking algorithms discourages third party businesses, which hinders innovation. According to some other scholarly articles, self-preferencing can sometimes increase productivity by lowering

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<sup>2</sup> Benjamin G Edelman and Damien Geradin, 'Android and Competition Law: Exploring and Assessing Google's Practices in Mobile' (2016) 12 *European Competition Journal* 159, Harvard PON Working Paper, SSRN <https://ssrn.com/abstract=2833476> accessed 20<sup>th</sup> May 2025.

<sup>3</sup> Y Kittaka, S Sato and Y Zenny, 'Self-preferencing by Platforms: A Literature Review' (2023) 66 *Japan and the World Economy* 101191 <https://www.sciencedirect.com/science/article/pii/S0922142523000178> accessed 20<sup>th</sup> May 2025.

transaction costs and integrating services. However, the possibility of misuse is still concerns<sup>4</sup>.

According to research by Gurkayak et al. (2021)<sup>5</sup>, this strategy lowers innovation and raises prices since there is less room for competition. Since platform-controlled limit rivals discoverability, self-preferring restricts consumers' access to a variety of alternatives.

When powerful digital platforms prioritize their own goods or services above those of rivals, this is known as self-preferring and raises serious antitrust issues. Although theoretical analyses, such as those by Tonazzi and Carovano, point to possible anti-competitive consequences, some empirical research, including those by Jürgensmeier and Skiera<sup>6</sup>, show no evidence of self-preferring on websites like Amazon. The goal of regulatory remedies like the Digital Markets Act of the European Union is to stop these kinds of activities. However, there is disagreement about whether restricting self-preferring is advantageous to consumers, as noted by Caminade et al<sup>7</sup>., suggesting that more study is necessary.

In another study it was highlighted that a method to differentiate between genuine competitive strategies and anti-competitive self-preferring. Even for dominant enterprises, it makes the case that pushing one's own product above competitors should be encouraged. There is a framework to determine when self- preferring becomes anti-competitive activity.<sup>8</sup>

## METHODOLOGY

The research methodology for this research paper will be purely doctrinal, which is further divided into two. I will be using primary sources such as interpretation of case studies of real-world including Google's Search Bias and Android Practices, Amazon's Private Label Strategy,

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<sup>4</sup> G A Manne and S Bowman, 'Platform Self-Preferencing: Benefits to Consumers and to Competition' (2021) International Center for Law & Economics <https://laweconcenter.org/spotlights/self-preferencing/> accessed 20<sup>th</sup> May 2025

<sup>5</sup> Gönenç Gürkaynak, Ali Kağan Uçar and Uzay Görkem Yıldız, 'Is There a Need for a Visible Hand in Digital Markets?' (2022) 6 *CoRe* 306 <https://heinonline.org/HOL/LandingPage?handle=hein.journals/core6&div=52&id=&page=> accessed 6 June 2025.

<sup>6</sup> L Jürgensmeier and B Skiera, 'Measuring Self-Preferencing on Digital Platforms' (2024) <https://arxiv.org/pdf/2303.14947> accessed 20th May 2025

<sup>7</sup> Jean Caminade, José Carvajal and Christopher Knittel, 'An Economic Analysis of the Self-Preferencing Debate' (2022) *Competition* 31 <https://www.analysisgroup.com/globalassets/insights/publishing/2022-caminade-et-al-an-economic-analysis-of-the-self-preferencing-debate.pdf> accessed 20th May 2025.

<sup>8</sup> Jonathan Jacobson and Anne Wang, 'Competition or Competitors? The Case of Self-Preferencing' (2023) 38 *Antitrust* 13 <https://www.wsgr.com/a/web/bW8aKf3yEkMqwKUwDCRi6D/jacobson-fall23.pdf> accessed 20th May 2025.

Apple's Play Store Policy etc. Furthermore, Secondary sources will be included exploring policies of various regulations, legal framework, historic court decisions involving large digital companies accused of practicing self-preferencing. Scholarly publications will also be analyzed to shed light on the wider effects of this practice impacting the consumer as well as the market systems. As this is not a non-empirical study, in order to draw conclusions about regulatory issues and possible remedies pertaining to this practice by dominant firms, this study uses legal reasonings and doctrinal interpretation rather than collecting data or statistical analysis.

## RESEARCH QUESTIONS AND OBJECTIVES

The questions that are worthy of pondering which lead to drafting of this research paper are:

- How does the practice of self-preferencing by dominant firms influence consumer purchasing behaviour in digital platforms, is it distorting the competition?
- What are the implications of self-preferencing for third-party businesses?

## Self-Preferencing

The dominant platforms in order to leverage their market position employ different practice of self-preferencing like:

- **Algorithmic rankings**-The major example for this is well-known case is Google Shopping, where Google provided significant placement to its own comparison-shopping service. Further demoted rival comparison-shopping services in its search result. Another major example for this is Amazon's algorithm ranking its own branded products higher in search result than other better rated brand products.<sup>9</sup>
- **Exclusive pre-installations** eg. Safari is the default web browser on all iOS devices & Samsung Apps pre-installed on Samsung devices; or
- **Discriminatory access to user data** for example the data collected from thousands of

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<sup>9</sup> European Commission, 'Antitrust: Commission Fines Google €2.42 Billion for Abusing Dominance as Search Engine by Giving Illegal Advantage to Own Comparison Shopping Service' [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_17\\_1784](https://ec.europa.eu/commission/presscorner/detail/en/ip_17_1784) accessed 6 June 2025.

third-party sellers enables the dominant firm to understand their target audience according to their preferences and demographics enhancing the identification of current gaps in market and to launch own products which directly competes the existing third-party sellers like “Amazon Basics”.

These are few practices commonly observed in dominant firms. It is argued that this practice of self-preferencing is beneficial when there is vertical integration which allows platforms to enhance user experiences hassle-free. Critics contend that self-preferencing is form of gatekeeping due to its nature of eliminating market access for rivals and reducing consumer choices.<sup>10</sup>

### Regulatory Landscape in India

According to *Section 4 of Competition Act* 2002, which outlines the abuse of dominant position states that “[1) No enterprise or group shall abuse its dominant position.]

(2) There shall be an abuse of dominant position [under sub-section (1), if an enterprise or a group]. —

(a) directly or indirectly, imposes unfair or discriminatory—

(i) condition in purchase or sale of goods or service; or

(ii) price in purchase or sale (including predatory price) of goods or service.”

The CCI has interpreted that self-preferencing is violative of Section 4(2)(a)(ii), barring discriminatory conditions or pricing. Furthermore, in *XYZ vs Alphabet Inc (2023)*<sup>11</sup>, CCI slapped humungous fine amounting Rs 1,337 crores on Google for mandating pre-installation of its own apps on Android devices, citing anti-competitive practices. In *All India Online Vendors Association vs Flipkart (2021)*, the CCI examined the allegations of preferential treatment towards Flipkart using its dominant position to favour sellers

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<sup>10</sup> Burton Ong and Ding Jun Toh, ‘Digital Dominance and Social Media Platforms: Are Competition Authorities Up to the Task?’ (2023) 54 *IIC – International Review of Intellectual Property and Competition Law* 527 <https://doi.org/10.1007/s40319-023-01302-1> accessed 6 June 2025.

<sup>11</sup> Case No. 07/2020

potentially foreclosing other vendors from the platform.<sup>12</sup>

Inspired from EU's Digital Markets Act (DMA), India introduced an ex-ante framework to regulate Systemically Significant Digital Enterprises (SSDEs) through the Digital Competition Bill 2024. The key provisions include:

- **Prohibition on Self-Preferencing:** There shouldn't be any form of favouritism for own products via search rankings or recommendations.
- **Data Separation:** To prevent the misuse of data collected from third-party sellers. Data collected should be isolated and secured.
- **Interoperability Mandates:** SSDEs must integrate rival services within their ecosystem for harmonious competition.

Critics contend that blanket ban on self-preferencing would overlook the potential benefits of such practices. Like in edtech sector, where platforms like Byju's incorporate their content to enhance the process of learning. As recommended by CCI in *Umar Javeed vs Google* (2019), case to case basis of the practice should be evaluated. It should be checked whether self-preferences causes anti-competitive effects rather than outrightly prohibiting it. For example, the focus of Amazon on its logistics saves your time by investing in Prime which benefits the consumer in dual manner, the consumer can watch through Prime OTT platform as well as receive packages at the earliest, this is cross-subsidising. This also enhances the competitive edge as other rivalry e-commerce platform will also come up with another innovative or creative idea to attract the consumer which is beneficial for the consumer as there are various choices opening up in the market. Interoperability can also mitigate the harms of this practice. For example, incorporating Paytm in Amazon's checkout or PhonePe used for booking BookMyShow tickets. In order to eliminate this form of gatekeeping practice. EU's Digital Services Act (DSA) mandates gatekeepers to share their key API (Advanced Programming Interface) with the rivals.<sup>13</sup>

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<sup>12</sup> CBCL, 'CCI's Expedited Approach to Tackle Violations in the E-Commerce Industry: In the Light of the Investigation against Amazon & Flipkart' (27 August 2021) *NLIU CBCL* <https://cbcl.nliu.ac.in/competition-law/ccis-expedited-approach-to-tackle-violations-in-the-e-commerce-industry-in-the-light-of-the-investigation-against-amazon-flipkart/> accessed 20th May 2025.

<sup>13</sup> Imke Reimers and Joel Waldfogel, *A Framework for Detection, Measurement, and Welfare Analysis of Platform Bias* (NBER Working Paper No 31766, October 2023) <https://doi.org/10.3386/w31766> Imke Reimers and Joel

## Case Studies

### Google's Search Bias and Android Practices

In CCI v. Google (2018), the regulator held Google liable for search bias by showing its own flight comparison feature prominently and pushing rivals such as Cleartrip down. India's first major decision against self-preferencing came in the form of a ₹136 crore penalty imposed by the CCI. A 2023 follow-up case was against Google Pay's preferential listing on the Play Store, which the CCI claimed used Android's dominance to monopolize India's UPI payments market.<sup>14</sup>

### Amazon's Private Label Strategy

In 2021, a Reuters investigation uncovered how Amazon India copied top-selling items from third-party merchants and pushed its own versions by search manipulation. AmazonBasics' electronics frequently popped up above higher-rated competitors, taking advantage of customer preference data, while Amazon justified this as improving the user experience.

### Apple's App Store Policy

Unlike EU's DMA, India's Draft Bill does not explicitly address app store monopolies, this is a crucial regulatory gap. The CCI's ongoing investigation into Apple's App Store (2022) is a global saga itself. Apple compels all apps excluding their own apps (like Apple Music, Apple TV+) to use its payment system and takes a big commission of 15-30% that money, benefiting them a price advantage. Developers weren't allowed to inform the users about cheaper alternatives available on their own website limiting consumer choice and refraining consumers availing cheaper payment systems.

## Market Competition & Consumer Implications

Self-preferencing can shut out competitors by withholding from them visibility and

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Waldfoegel, *A Framework for Detection, Measurement, and Welfare Analysis of Platform Bias* (NBER Working Paper No 31766, October 2023) <https://doi.org/10.3386/w31766> 15th may 2025

<sup>14</sup> Outlook Business, 'The CCI's Arbitrary Scrutiny Is Jeopardising India's Global Tech Hub Dreams' (28 January 2025) <https://www.outlookbusiness.com/columns/the-ccis-arbitrary-scrutiny-is-jeopardising-indias-global-tech-hub-dreams> accessed 31st may 2025.

information. Google's pre-installation of Maps on Android phones keeps MapmyIndia, which has no similar distribution networks, at a disadvantage<sup>15</sup>. Empirical evidence indicates best-selling items on Amazon India gather 80% of clicks<sup>16</sup>, so algorithmic bias is an effective exclusionary mechanism. Start-ups that depend on platforms for sales have disincentives to innovate if their offerings are trumped. Swiggy's cloud kitchen, The Bowl Company, is said to use order information to undercut restaurant partners, discouraging culinary innovation<sup>17</sup>. On the other hand, platforms cite integrated services (e.g., Flipkart's logistics unit) drive ecosystem-wide efficiency

This practice could impact adversely the economic as well. For example, The Google Shopping case demoted other comparison services while promoting own, reducing traffic to rivals over 50%<sup>18</sup>. The dominant firms would also be able to take advantage of locked-in users through higher prices or by compromising on the quality. The upcoming startups or small-scale business would find it difficult to gain traction when dominant firms are promoting their own products and services with the help of such abusive practices. This will let down both innovation and creation and reinforces monopolistic behaviour.

In India, digital divide is really prominent. A significant portion of the population is digitally illiterate. Hence, they might not be aware of what appears on top of the search or recommendation list is influenced by the platform bias rather than the merit. This weakens the informed choice and affects the consumer autonomy. The long-term effects of this practice could be detrimental as consumers might be offered with less product diversity, very less choice and price manipulation once competitors are thrown out. Additionally the consumer trust gets eroded when the platform directs the customer into buying a product which might not be the best or wouldn't be cost effective option. Overall, it is not a healthy practice. The user

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<sup>15</sup> Outlook Business, 'The CCI's Arbitrary Scrutiny Is Jeopardising India's Global Tech Hub Dreams' (28 January 2025) <https://www.outlookbusiness.com/columns/the-ccis-arbitrary-scrutiny-is-jeopardising-indias-global-tech-hub-dreams> accessed 31st may 2025

<sup>16</sup> Fiona Scott Morton and others, *Self-Preferencing at Amazon: Evidence from Search Rankings* (Harvard Business School Working Paper, 2023) [https://www.hbs.edu/ris/Publication%20Files/Self-Preferencing%20at%20Amazon%20-%20Evidence%20from%20Search%20Rankings\\_c3330c64-0bad-48e7-98e7-afdd8356afd4.pdf](https://www.hbs.edu/ris/Publication%20Files/Self-Preferencing%20at%20Amazon%20-%20Evidence%20from%20Search%20Rankings_c3330c64-0bad-48e7-98e7-afdd8356afd4.pdf) accessed 20<sup>th</sup> may 2025

<sup>17</sup> Law School Policy Review, 'Too Deferential: Critiquing CCI's Approach in the Amazon Private Label Brands Case' (22 January 2023) <https://lawschoolpolicyreview.com/2023/01/22/too-deferential-critiquing-ccis-approach-in-the-amazon-private-label-brands-case> accessed 25th may 2025

<sup>18</sup> Stibbe, 'Google Shopping: Self-Preferencing Can Be Abusive' (2 October 2024) <https://www.stibbe.com/publications-and-insights/google-shopping-self-preferencing-can-be-abusive> accessed 01 June 2025.



experience as advocated by most of the companies include seamless service integration, faster delivery and lower prices.

## **CONCLUSION**

In Indian digital markets this practice of self-preferencing offers dual challenges: unchecked practice might proliferate the entrenching monopoly. However, heavy-handed regulations could eliminate sector vital economic growth. The draft digital competition Bill 2024 embodies as a proactive step; it demands for balancing consumer protection along with innovation incentives. After assessing various case studies and Section 4 of Competition Act which mandates interoperability it is vital to understand the economy and bring in changes like structural separation of platform and marketplace operation & algorithmic audits etc. As India aspires to achieve \$1 trillion within 2030 by digital economy, it is imperative to foster a healthy competition in this fluctuating market scenario.