DIGITAL MARKETS AND COMPETITION LAW IN INDIA: A CRITICAL ANALYSIS WITH SPECIFIC REFERENCE TO THE DIGITAL COMPETITION BILL, 2024

Abstract

Digital markets in India have expanded rapidly in recent times, raising novel competition concerns that India's traditional *ex-ante* competition law framework must address. This paper examines recent developments in India's competition law regime in the context of digital markets, including the now-withdrawn Draft Digital Competition Bill, 2024 (hereinafter, referred to as "DDCB"). It provides an overview of the Competition Act, 2002 (hereinafter referred to as "the Act"), India's primary legislation governing competition in the market. It further discusses the rise of digital platforms, associated monopolistic risks, and important cases against tech giants before the Competition Commission of India (hereinafter, referred to as the CCI). It then traces the events leading to the DDCB, including parliamentary and expert committee reports urging *ex-ante* rules for rising competition concerns in the digital era. It critically analyses the objectives and provisions of the aforementioned Bill and compares it with those of other jurisdictions. The paper gives a reasoned analysis of whether withdrawing the Bill was prudent or a missed opportunity, and in conclusion, proposes next steps for effective competition regulation in India in the digital era.

I Introduction

INDIA'S MODERN competition law regime is grounded in the Competition Act, 2002, which replaced the antiquated Monopolies and Restrictive Trade Practices Act, 1969.[1] Enacted in the wake of 1990s economic liberalisation, the Competition Act, 2002, was designed to promote fair competition, prevent practices having adverse effects on competition, protect consumer interests, and ensure freedom of trade in Indian markets.[2] The Act established the Competition Commission of India (CCI) as the enforcement authority, empowered to investigate anti-competitive conduct, regulate mergers, and advocate for pro-competition policies.[3] The CCI became fully operational by 2009, reflecting a transition from the earlier regime's focus on curbing monopolies to a modern approach emphasising market efficiency and consumer welfare.

Three pillars of competition law

In India, under the Competition Act, 2002, certain anticompetitive practices are prohibited. Section 3 of the Act prohibits anti-competitive agreements, including

1 The Competition Act, 2002, Act No. 12 of 2003, Gazette of India, Pt II, Sec 1, Jan. 20, 2003.

2 Procheto Dasgupta, "The Competition Act, 2002: A Comprehensive Analysis" 6(6) *Indian Journal of Law and Legal Research* (2025), *available at* : https://www.ijllr.com/post/the-competition-act-2002-a-comprehensive-analysis?utm (last visited on Oct. 11, 2025).

3 Taxmann, "Basic Primer on the Indian Competition Act", *Taxmann Blog*, 23 Mar. 2023, *available at*: https://www.taxmann.com/post/blog/basic-primer-on-the-indian-competition-act/?utm (last visited on Oct. 11, 2025).

cartels, bid-rigging, price-fixing, and other collusive practices that appreciably restrain competition.[4] Section 4 deals with abuse of dominant position by an enterprise. According to the Act, an enterprise is deemed to be dominant if it can operate independently of competitive forces in the relevant market. The Act then prohibits conduct such as predatory pricing, denial of market access, exclusive dealing or tying that unfairly exploits or protects that dominance.[5] Sections 5 and 6 regulate combinations above certain asset or turnover thresholds, requiring CCI's approval to pre-empt structural market concentration that could substantially lessen competition.[6] Notably, the Competition (Amendment) Act, 2023, in India formally introduced a "Deal Value Threshold" (DVT) as a new jurisdictional test for merger control (transactions over 2,000 Crore with significant local business) to capture acquisitions of high-value digital startups that might have low current turnover.[7]

Background of market regulation in India

Traditionally, India's competition law enforcement has been *ex-post* and case-specific. The CCI acts after investigating specific allegations of anti-competitive conduct or potentially harmful mergers, rather than imposing broad upfront rules on market structure. This framework, influenced by global best practices and the Raghavan Committee's recommendations in 2000, represented a shift from the MRTP era of narrow monopoly control to a modern effects-based regime.

Under the Act, markets across various sectors, from cement and automobiles to telecom and pharmaceuticals, have been subjected to CCI's scrutiny. Remedies have ranged from hefty fines to conduct directions aimed at restoring competitive conditions. Overall, the Act's *ex-post* enforcement paradigm relies on after-the-fact intervention. Wherein, anti-competitive agreements and abuses are penalised once proven, and mergers are addressed only if competitive harm is foreseen.

While generally effective, this regime's suitability for fast-evolving digital markets has been questioned in recent times. Traditional enforcement can be time-consuming, given detailed investigations and legal challenges.[8] By the time the CCI adjudicates a case involving digital market concerns, the market may have "tipped" irreversibly in favour of a dominant network platform. Moreover, proving dominance and harm in multi-sided digital platform markets is complex, requiring the definition of novel relevant markets (*e.g.* for online search, app stores or social media) and economic

4 The Competition Act, 2002 (Act No. 12 of 2003), s. 3.

5 *Id.,* s. 4.

6 *Id.,* ss. 5–6.

7 The Competition (Amendment) Act, 2023 (Act 9 of 2023) (Gazette of India, Extraordinary, Pt. II, Sec. 1, 11 Apr. 2023).

8 Committee on Digital Competition Law, "Report of the Committee on Digital Competition Law", (2024), *available at*: https://prsindia.org/files/parliamentry-announcement/2024-04-15/CDCL-Report-20240312.pdf (last visited on Oct. 11, 2025).

evidence of anti-competitive effects. India's competition law did not originally contemplate phenomena like data-driven network effects or zero-price services, which characterise the digital market in the contemporary scenario. Consequently, as discussed in the later part of this paper, the CCI had to stretch traditional doctrines to address new-age issues, and policymakers began debating if additional tools were needed to ensure fair competition in the digital era.[9]

II Competition issues and challenges in digital markets in India

Over the past decade, India's digital economy has grown exponentially, giving rise to dominant online platforms. The country now hosts one of the world's largest user bases for platforms such as Google (search, Android), Meta (Facebook, WhatsApp, Instagram), Amazon and Walmart-owned Flipkart (e-commerce), and others. This digital boom has brought immense benefits such as increased connectivity, consumer choice, and innovation, but also new competition challenges. Digital markets tend towards concentration due to network effects and data advantages: the more users or data a platform has, the more attractive and entrenched it becomes.[10] As a result, Indian digital sectors often "tip" to a few large players before traditional policy responses or *ex-post* competition enforcement can react. Policymakers and stakeholders have voiced concerns about monopolistic practices emerging in these markets, which could stifle nascent competitors and harm consumers in the long run.

Key competition issues in digital markets

Several types of conduct by major digital platforms have raised red flags in India. One concern is self-preferencing by "dual-role" platforms that both host third-party sellers and sell their own goods or services. For instance, an e-commerce marketplace might favor its in-house brands in search rankings or discounting, or a mobile operating system might privilege its own apps over rivals'. The lack of platform neutrality can distort the level playing field. Another issue is exclusive dealing and tying, where dominant firms bundle products or impose conditions that force users or business partners to use supplementary services. This can leverage power from one market into adjacent markets, for example, requiring use of a proprietary payment system to be listed on an app store. Indian startups have alleged that certain app store operators and online marketplaces engaged in such tying and exclusivity to foreclose competition.[11]

Data exploitation is a further concern: dominant digital firms possess vast personal data, enabling them to personalize services and ads. However, combining user data from multiple services can reinforce their market power and raise entry barriers for newcomers who lack comparable data scale.[12] The use of non-public data collected

9 *Id.* at 3-4.

10 *Supra* note 8.

11 *Id.*, para. 1.13.

12 *Supra* note 8.

from business users to compete against those same users (for instance, an e-commerce platform using seller data to launch competing products) has also been criticized as unfair competition.[13] Additionally, deep discounting and predatory pricing strategies by cash-rich tech giants have been seen as a successful strategy in driving out competitors, a practice observed in sectors like ride-hailing and online retail during periods of intense competition funded by investor capital.[14] Traditional competition law can capture predatory pricing under abuse of dominance rules, but proving recoupment and intent in digital contexts can be challenging.

Cases involving digital markets before the Competition Commission of India

Reflecting these concerns, the CCI in recent years has undertaken a series of investigations against global tech companies. Google has faced multiple CCI interventions. In the year 2018 the CCI found Google to have abused its dominant position in online search by displaying biased search results favoring its own services over rivals, causing harm to competitors and users. A penalty of 136 crore was imposed for this "search bias" conduct. Modest in amount, but significant as India's first antitrust sanction on a Big Tech firm.

More recently, in October 2022, the CCI issued two orders against Google relating to its mobile Android ecosystem and app store policies. In the Android case, Google was fined 1,337 crore for exploiting its dominant position in the Android mobile operating system by imposing restrictive contracts on device manufacturers, such as requiring pre-installation of Google's suite of apps and preventing use of forked Android versions.[15] In a separate case concerning the Google Play Store, the CCI levied a 936 crore fine for Google's policies around app payments, which forced app developers to use Google's billing system and pay high commissions.[16] The regulator held that Google's conduct in both instances was anti-competitive, mirroring issues that had also been flagged by other jurisdictions. Google appealed these orders, but they underscore the CCI's increased scrutiny of dominant digital platforms.

Meta (Facebook) and its subsidiary WhatsApp were also investigated over WhatsApp's 2021 privacy policy update that mandated extensive data sharing with Facebook. In 2023, the CCI ruled that WhatsApp had abused its dominant position in the Indian

13 *Id.,* para. 1.15.

14 *Id.,* para. 3.4.

15 *In re: Mobile Application Distribution Agreement and Anti-fragmentation Agreement of Google LLC and Google India Pvt. Ltd.*, Case No. 39 of 2018, Order dated Oct. 20, 2022, Competition Commission of India, *available at*: https://www.cci.gov.in/images/antitrustorder/en/3920181652264686.pdf(last visited on Oct. 16, 2025).

16 Competition Commission of India, *In re: Google LLC and Google India Private Limited (Play Store Policies)*, Case No. 07 of 2020, Order dated Oct. 25, 2022, *available at*: https://www.cci.gov.in/images/antitrustorder/en/order1666696935.pdf (last visited on Oct. 16, 2025).

messaging market by imposing unfair terms on users, essentially forcing them to accept a data-sharing policy that they could not opt out of. [17] The CCI observed that WhatsApp's policy enabled an excessive sharing of user data with Meta's other services, enhancing Meta's market power in online advertising in a way that could lock in users and advertisers, thereby denying market access to competitors.[18] As a remedy, the CCI ordered WhatsApp to cease sharing user data with Meta for advertising for a period of five years, among other behavioral conditions.

In the e-commerce sector, the CCI launched inquiries into Amazon and Flipkart over allegations of preferential treatment for select sellers and deep discounting. A 2019 complaint by trader associations accused these platforms of skewing the marketplace against small sellers *via* exclusive partnerships and self-preferencing of affiliated wholesalers.[19] While these investigations were slowed by court challenges, the Supreme Court eventually allowed the CCI to proceed, noting the need to ascertain whether these marketplace giants were violating competition law. The matter remains under investigation, but the very fact that it has been pending since 2019 illustrates the slow pace of disposal in these matters, digital markets can evolve or be foreclosed in the years it takes to reach an outcome.[20] Similarly, the CCI has examined Apple's App Store policies, such as the 30% commission and restrictions on alternative app downloads, on allegations that Apple is abusing dominance among iOS App distributors.[21] Numerous other digital economy cases involving conduct by food delivery platforms, online travel agencies, and app-based taxi services have been filed or taken up by the regulator.

This wave of enforcement shows that Indian authorities are actively grappling with big tech's practices using the existing Competition Act, 2002. However, many of these cases remain in progress or under appeal, and the outcomes are often years delayed. Stakeholders have thus argued that an *ex-post* case-by-case approach may be

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17 Competition Commission of India, – *WhatsApp LLC.*, Order in Case No. 17 of 2023, *available at*: https://www.cci.gov.in/images/antitrustorder/en/order1732001619.pdf(last visited on Oct. 16, 2025).

18 *Ibid.*

19 Competition Commission of India, *Order directing investigation in Case No. 40/2019 (Delhi Vyapar Mahasangh*v. *Amazon Seller Services Pvt. Ltd. and Flipkart Internet Pvt. Ltd.)*, *available at*: https://www.cci.gov.in/images/antitrustorder/en/4020191652260285.pdf(last visited on Oct. 16, 2025).

20 Dentons Link Legal, Antitrust and Competition Newsletter – Sep. 2023, *Dentons Link Legal*, (Oct. 2023), *available at*: https://www.dentonslinklegal.com/en/insights/newsletters/2023/october/11/antitrust-and-competition-newsletter/antitrust-and-competition-newsletter—september-2023(last visited on Oct. 11, 2025).

21 Competition Commission of India, *Together We Fight Society* v. *Apple Inc. & Apple India Pvt. Ltd.*, Case No. 24 of 2021, *available at*: https://www.cci.gov.in/images/antitrustorder/en/2420211652248175.pdf(last visited on Oct. 17, 2025).

insufficient to promptly curb the market power of tech-giants in digital markets or to prevent irreversible anti-competitive harm in these fast-moving digital markets.[22]

III Genesis of the draft Digital Competition Bill, 2024– Events and drivers

The push for a specialised digital competition law in India emerged from growing recognition both within government and among experts that traditional antitrust tools need augmentation to tackle anti- competitive practices in the digital market. A key catalyst was the Parliamentary Standing Committee on Finance's 53rd Report titled *"Anti-Competitive Practices by Big Tech Companies,"* presented in December 2022.[23] This cross-party committee, chaired by Jayant Sinha, conducted an extensive study of digital market issues and concluded that India's competition regime required an *ex-ante* framework to complement the existing *ex-post* enforcement.[24] The committee's report observed that digital markets exhibit "increasing returns to size" and strong network effects, often leading to a "winner-takes-all" outcome where a few players rapidly corner the market. By the time ex-post regulation intervenes, the damage to competition may already be done. The standing committee warned that competitive evaluation must occur before markets end up monopolised, instead of the *ex-post* evaluation done presently.

Crucially, the standing committee recommended enacting a new Digital Competition Act to ensure a "fair, transparent, and contestable digital ecosystem" in India.[25] It advocated identifying leading digital platforms that serve as "digital gatekeepers" and subjecting them to a special regime of obligations. The report proposed the term "Systemically Important Digital Intermediaries ("SIDIs")" for such leading players, to be designated based on criteria like user base, market capitalisation, and revenue, amongst others.[26] These SIDIs would then be obliged to comply with a set of *ex-ante* behavioural norms to curb the ten types of anti-competitive practices the committee had identified in digital markets.[27] The ten practices highlighted were:

(i) anti-steering provisions (preventing business users or customers from switching or using alternatives);

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22 Committee on Digital Competition Law, "Report of the Committee on Digital Competition Law", (March, 2024) para. 1.1, *available at*: https://prsindia.org/files/parliamentry-announcement/2024-04-15/CDCL-Report-20240312.pdf (last visited on Oct. 17, 2025).

23 Standing Committee on Finance (17th Lok Sabha), "Fifty-Third Report on 'Anti-Competitive Practices by Big Tech Companies" 1 (Presented to Lok Sabha and laid in Rajya Sabha on 22 Dec. 2022), *available at*: https://sansad.in/getFile/lsscommittee/Finance/17_Finance_60.pdf?source=loksabhadocs (last visited on Oct. 17, 2025).

24 *Id.* at 31-32.

25 *Id.* at 38.

26 *Id.* at 39.

27 *Id.* at 40.

(ii) lack of platform neutrality/self-preferencing (favoring one's own services on a platform);

(iii) adjacency and bundling/tying of services;

(iv) exploitative use of data, especially non-public personal data, to gain a competitive advantage;

(v) pricing strategies like deep discounting or predatory pricing;

(vi) exclusive tie-ups that lock in suppliers or customers;

(vii) manipulative search and ranking algorithms that bias results;

(viii) restricting third-party application installation or interoperability;

(ix) unfair advertising policies; and

(x) anti-competitive mergers and acquisitions aimed at eliminating emerging rivals.[28]

The committee specifically noted that mergers were being addressed by other measures (introduction of deal-value thresholds in the Act), so its focus for a new law would be on the first nine conduct categories. For each of these practices, the committee recommended explicit prohibitions or obligations for SIDIs, essentially a code of conduct to prevent these practices, rather than waiting to punish them after the occurrence of anti-competitive activity.

Following the standing committee's strong recommendations, the Government of India took concrete steps in 2023 towards formulating a digital competition law. On February 6, 2023, the Ministry of Corporate Affairs ("MCA") constituted an expert Committee on Digital Competition Law ("CDCL"), bringing together key government officials, legal and economic experts, and industry representatives.[29] The CDCL's mandate was to examine whether existing competition provisions were adequate for the digital economy's challenges and to propose a framework for an *ex-ante* regulatory mechanism if needed.[30] This move closely followed the submission of the standing committee's report, signalling government acknowledgement of the need to explore a new approach. Over the rest of 2023, the CDCL studied India's competition law in

28 *Id.* at 41.

29 Ministry of Corporate Affairs, Government of India, "Constitution of Committee on Digital Competition Law" (Order No. 06/11/2022-Com-MCA, Feb. 6, 2023), *available at*: https://images.assettype.com/barandbench/2023-02/7e93ae0c-05b9-4565-9b5b-a9a6103ac6ff/Order.pdf(last visited on Oct. 11, 2025).

30 Innovation and Technology Policy Institute, "Comments to the Indian Ministry of Corporate Affairs regarding Digital Competition Law" 2 (May 15, 2024), *available at*: https://itif.org/publications/2024/05/15/comments-to-the-indian-ministry-of-corporate-affairs-regarding-digital-competition-law/(last visited on Oct. 17, 2025).

the context of digital markets and surveyed international models. It held consultations with stakeholders and reviewed regulatory approaches in jurisdictions such as the EU, UK, US, and others.[31] The CDCL found that certain unique characteristics of digital markets, their dynamic nature, tendency towards concentration, and the rapid pace at which anti-competitive behavior can entrench, justify *ex-ante* measures to supplement the current law.[32] In its analysis, reliance solely on *ex-post* enforcement requires proving the dominance and harm in each case. Thus, it might be inadequate to ensure that the markets remain contestable and fair.

The CDCL delivered its report to the MCA in February 2024. In tandem, it prepared a draft law as an annexure. On March 6, 2024, the Ministry of Corporate Affairs publicly released the DDCB for discussion.[33] This draft legislation was India's version of a digital competition law, drawing inspiration from but also differing in parts from the European Union's Digital Markets Act ("DMA") and proposals elsewhere. The objectives of the DDCB were clear: to identify the biggest digital firms (those with a "significant presence" in India's digital ecosystem) and impose pre-determined rules on their conduct so as to pre-empt anti-competitive harm.[34] The CDCL recommended using criteria to designate "Systemically Significant Digital Enterprises ("SSDEs")", analogous to the SIDIs proposed by the standing committee. SSDEs would be the large online platforms subject to the new law. The draft bill set out quantitative thresholds, likely based on global turnover or user count for automatically flagging a company as an SSDE, and also included qualitative criteria to capture firms that, even if below the formal threshold, could be declared SSDE if they met certain influence tests.[35] By covering the qualitative factors, the Bill aimed not to let major platforms escape regulation due to technicalities, though critics later argued this approach introduced vagueness and uncertainty in who might be designated.

31 Ministry of Corporate Affairs, "Report of the Committee on Digital Competition Law" 1–2 (March, 2024), *available at*: https://prsindia.org/files/parliamentry-announcement/2024-04-15/CDCL-Report-20240312.pdf (last visited on Oct. 17, 2025).

32 Monopoly and Competition Review, "Need for a Separate Digital Competition Law in India – Challenges to Existing Competition Enforcement" *Tech* and *Competition Law & Policy Blog*, (Sept. 2023), *available at*: https://www.tcclr.com/post/need-for-a-separate-digital-competition-law-in-india-challenges-to-existing-competition-enforcement (last visited on Oct. 19, 2025).

33 Ministry of Corporate Affairs, "MCA invites public comments on Report of Committee on Digital Competition Law and Draft Bill on Digital Competition Law" (Press Release, Mar. 12, 2024), *available at*: https://pib.gov.in/PressReleasePage.aspx?PRID=2013947 (last visited on Oct. 20, 2025).

34 Lokesh Bulchandani, "Overview of India's Digital Competition Bill, 2024", *GWU Competition Lab*, (8 Aug. 2024), *available at*: https://competitionlab.gwu.edu/overview-indias-digital-competition-bill-2024 (last visited on Oct. 20, 2025).

35 "Draft Digital Competition Bill, 2024 – Background of the Legislation" (ITIF, 24 May 2024), *available at*: https://itif.org/events/2024/05/24/draft-digital-competition-bill-2024-background-of-the-legislation/(last visited on Oct. 20, 2025).

Under the DDCB, SSDEs would face a set of prohibited conduct and obligations mirroring the anti-competitive practices identified earlier. Effectively, the draft enumerated the nine key prohibited practices for SSDEs, which included bans on self-preferencing, tying and bundling of core services, exclusive dealings, anti-steering clauses, misuse of business users' data, and so forth. For example, an SSDE operating a platform would be forbidden from favouring its own services in rankings or access to address platform neutrality. They would be required to allow interoperability or third-party integrations, *e.g.* permitting the installation of third-party apps or app stores on a dominant mobile OS.[36] SSDEs would also be barred from forcing consumers to buy a bundle of services to use one core service (no coercive tying).

The Bill contemplated restrictions on combining personal data collected from different services, unless user consent is obtained, to prevent data-fuelled competitive advantages.[37] These obligations closely tracked the recommendations of the standing committee and broadly aligned with the kinds of rules in the EU's DMA, such as bans on self-preferencing and anti-steering. However, the DDCB also appeared to incorporate the UK's approach of tailoring obligations; it allowed the possibility of firm-specific codes of conduct, meaning the regulator, which is the CCI, could potentially fine-tune requirements for each designated SSDE. The CCI was envisaged as the implementing authority: it would designate SSDEs, monitor compliance, and enforce the new rules, backed by powers to levy fines for violations.

The push for the DDCB was further propelled by the global context. By 2023, the European Union had adopted its DMA in November 2022, which began designating Big Tech "gatekeepers" and imposing ex-ante obligations on them. Other jurisdictions like Germany had updated laws to address digital giants, and the UK had published its Digital Markets Competition and Consumers ("DMCC") Bill in draft. Indian policymakers on the CDCL and in Parliament were keenly aware of these international developments. This global momentum gave weight to the idea that India, too, should have a specialised regime to curb digital market abuses proactively. At the same time, it provided examples to learn from both successes and pitfalls, which would become relevant in evaluating India's own draft law.

Before turning to a critique of the DDCB and the reasons for its withdrawal, it is worth noting that, parallel to these *ex-ante* regulatory discussions, the government also strengthened the Competition Act, 2002, through the Competition (Amendment) Act, 2023. The amendment in 2023 introduced important changes like deal-value merger notification threshold, settlement and commitment mechanisms for faster

36 *Supra* note 22.

37 Draft Digital Competition Bill, 2024, (Annexure IV to Report of the Committee on Digital Competition Law), s. 12(1), (Ministry of Corporate Affairs, India, Mar. 2024), *available at*: https://www.medianama.com/wp-content/uploads/2024/03/draft-digital-competition-bill-2024.pdf (last visited on Oct. 20, 2025).

case disposal, and changes to penalty norms.[38] These changes equip the CCI with more flexibility and tools to handle complex cases, including those in digital markets, within the existing law.

IV Draft Digital Competition Bill, 2024 and reasons for withdrawal

The DDCB represented a bold regulatory experiment seeking to impose *ex-ante* rules on Big Tech firms in India akin to the EU's landmark DMA. Its objectives were well-intentioned: to preserve competition and contestability in digital markets by preventing dominant gatekeepers from engaging in practices that lock in users or exclude competitors.[39] Rather than waiting years to adjudicate after harm has occurred, the law aimed to ensure a competitive structure for Indian digital markets through timely intervention.[40] This preventive approach was justified by the CDCL because digital markets are dynamic and can irremediably tip in favor of one or two players if abuses are not checked early.

Key provisions and their comparison with international jurisdictions

The DDCB's core provisions, such as the designation of SSDEs and the list of prohibited conduct for them closely mirrored emerging international norms. Much like the EU's DMA's designation of "gatekeepers" based on size and user thresholds, India's Bill would capture major players simply due to their scale (*e.g.* a large global tech firm operating in India).[41] However, unlike the DMA's strictly quantitative criteria, the DCB also allowed a more discretionary qualitative designation of SSDEs, which raised concerns about legal uncertainty and overreach.

Once designated, an SSDE under the Bill would face *per se* prohibitions on practices that are typically analysed under a "rule of reason" in the traditional antitrust regime. For example, self-preferencing or bundling, which can sometimes have pro-competitive justifications, would be forbidden *per se* for SSDEs with no need to prove an anti-competitive effect. This reflects a shift to bright-line rules: the Bill presumed that certain conduct by a very large digital platform is inherently harmful to competition, obviating the need for case-by-case analysis. The EU's DMA likewise uses bright-line obligations. *E.g.* a gatekeeper shall not combine personal data from different services

38 The Competition (Amendment) Act, 2023 (Act No. 9 of 2023), s. 1, *available at*: https://prsindia.org/files/bills_acts/acts_parliament/2023/The%20Competition%20%28Amendment%29%20Act%2C%202023.pdf (last visited on Oct. 11, 2025).

39 Draft Digital Competition Bill, 2024, Draft Bill (Ministry of Corporate Affairs, India, Mar. 2024) (Annexure to Report of the Committee on Digital Competition Law), *available at*: https://prsindia.org/files/parliamentry-announcement/2024-04-15/CDCL-Report-20240312.pdf (last visited on Oct. 20, 2025).

40 Committee on Digital Competition Law, "Report of the Committee on Digital Competition Law", para. 1.4 (Ministry of Corporate Affairs, Government of India, Feb. 2024), *available at*: https://prsindia.org/files/parliamentry-announcement/2024-04-15/CDCL-Report-20240312.pdf (last visited on Oct. 20, 2025).

without consent, shall not prevent side-loading of apps, *etc.,* and the DDCB followed suit in many respects.[42] The Bill also drew from the UK's proposed Digital Markets Competition and Consumers Act ("DMCC") by suggesting company-specific codes, meaning the CCI could tailor remedies or additional obligations unique to a particular SSDE's business model. This was intended to provide flexibility. For instance, regulations for a social media SSDE might differ from those for an e-commerce SSDE, but it also means a more complex, potentially less transparent system than the one-size-fits-all rules of the EU DMA.

Internationally, India's initiative was seen as part of a broader trend of jurisdictions trying to handle the complex issues involved in the digital market. The EU DMA is the most directly comparable law; it identifies core platform services (search, social networks, app stores, *etc.*) and designates companies meeting high revenue and user benchmarks as "gatekeepers." Those gatekeepers must comply with a list of Do's and Don'ts similar to what the DCB proposed: *e.g.*, do allow users to uninstall preloaded apps, don't rank your own products higher than rivals, don't prevent users from accessing off-platform offers.[43] The DMA is now in force, and by 2023–24, the European Commission had officially designated firms like Alphabet (Google), Meta, Apple, Amazon, Microsoft, and ByteDance as gatekeepers, compelling changes to their business practices in the EU, such as Google offering search engine choice screens, Apple allowing third-party app stores in Europe, *etc.*[44] However, initial enforcement of the DMA has highlighted challenges: delays in compliance, legal pushback from companies, and questions about the DMA's ability to keep up with new technologies. Critics in Europe argued that while the DMA imposes rigid rules, it may have gaps. For example, it was not initially designed to address generative AI models or future digital conglomerates and that overly rigid rules can sometimes discourage scale and innovation without necessarily fostering new competition. India's

41 Daniel Castro and Nigel Cory, "Comments to the Indian Ministry of Corporate Affairs regarding Digital Competition Law" (Information Technology & Innovation Foundation [ITIF], 15, May 2024), *available at*: https://itif.org/publications/2024/05/15/comments-to-the-indian-ministry-of-corporate-affairs-regarding-digital-competition-law/(last visited on Oct. 21, 2025).

42 Sarvesh Mathion, "Summary: India's Draft Digital Competition Bill, 2024" *MediaNama* (14 Mar. 2024), *available at*: https://www.medianama.com/2024/03/223-summary-draft-digital-competition-bill-2024-2/(last visited on Oct. 21, 2025).

43 Shruti Aji Murali, "Does Europe's Digital Markets Act Suit India's Digital Market Regulation Needs?" *MediaNama* (2 May 2023), *available at*: https://www.medianama.com/2023/05/223-does-eus-digital-markets-act-suit-indias-digital-market-regulation-needs-nama/ (last visited on Oct. 21, 2025).

44 "Digital Markets Act: Apple, Google, Microsoft, Meta and others are now 'gatekeepers' in the EU," *Times of India*, 6 Sept. 2023, *available at*: https://timesofindia.indiatimes.com/gadgets-news/digital-markets-act-apple-google-microsoft-meta-and-others-are-now-gatekeepers-in-the-eu/articleshow/103441281.cms (last visited on Oct. 25, 2025).

Bill was explicitly modelled on the DMA's *ex-ante* philosophy, but Indian officials also watched these early results to avoid replicating shortcomings.[45]

In the United States, no equivalent federal digital competition law has been enacted to date, despite proposals such as the American Innovation and Choice Online Act which aimed to ban self-preferencing by large platforms.[46] The United States approach remains primarily *ex-post*, relying on antitrust litigation. Notably, the United States Department of Justice and Federal Trade Commission have ongoing monopoly lawsuits against Google[47] (for search and advertising) and Meta[48] (for past acquisitions), and these cases are testing how traditional antitrust rules can be applied to tech giants. India's CCI has similarly been pursuing *ex-post* cases, but the DDCB would have leapfrogged the United States by creating a statutory code of conduct for tech giants, something the United States Congress has so far not agreed on.[49] Other jurisdictions offer varied approaches: Japan implemented narrower laws focusing on transparency in digital platform terms,[50] South Korea passed an amendment to curb app store payment monopolies,[51] and Australia has proceeded *via* sector-specific codes like a news media bargaining code for Google/Facebook and is considering broader conduct rules via its competition authority. The DDCB placed India among the more ambitious regulators in aiming for a sweeping, economy-wide digital competition statute.

From the moment the CDCL report and draft Bill were unveiled, they elicited mixed reactions. Many startups and Indian tech SMEs welcomed the prospect of constraints

45 "Centre May Drop Ex-Ante Rules from Digital Competition Bill," *MediaNama* (Aug. 2025), *available at*: https://www.medianama.com/2025/08/223-centre-ex-ante-rules-digital-competition-bill/(last visited on Oct. 21, 2025).

46 "The American Innovation and Choice Online Act: What it Does and What it Means," *Bipartisan Policy Center* (2024), *available a*t: https://bipartisanpolicy.org/explainer/s2992/(last visited on Oct. 21, 2025).

47 United States Department of Justice, "Justice Department Sues Google for Monopolizing Digital Advertising Technologies" (Press Release, Jan. 24, 2023), *available at*: https://www.justice.gov/opa/pr/justice-department-sues-google-monopolizing-digital-advertising-technologies(last visited on Oct. 21, 2025).

48 Federal Trade Commission, *FTC* v. *Meta Platforms, Inc.* (Case No. 20-cv-3590) (filed Dec. 8, 2020; amended complaint Aug. 19, 2021), *available at*: https://www.ftc.gov/legal-library/browse/cases-proceedings/191-0134-facebook-inc-ftc-v-ftc-v-meta-platforms-inc (last visited on Oct. 21, 2025).

49 Matt Stoller, "Why America has no Digital Competition Law and what India could learn" *Open Markets Institute* (Apr. 7, 2024), *available at*: https://antitrustcasebook.org/download/Chapter%20XIV_web.pdf(last visited on Oct. 23, 2025).

50 Act on Improving Transparency and Fairness of Specified Digital Platforms (Japan) (Promulgated Jun.3, 2020, entered into force Feb.1, 2021) (Japan), *available at*: https://www.japaneselawtranslation.go.jp/ja/laws/view/4532/en(last visited on Oct. 23, 2025).

51 SEAPPI, "Digital-Platform Regulation in APEC Economies" 12 (Sept. 2025), *available at*: https://seapublicpolicy.org/wp-content/uploads/2025/09/SEAPPI_Digital-Platform-Regulation-in-APEC_September-2025.pdf (last visited on Oct. 23, 2025).

on technology giants, hoping this would level the playing field and curb exploitative practices that smaller actors felt subject to, such as high app store fees or search ranking discrimination. However, significant pushback came from major technology companies and industry associations, who cautioned that the Bill's approach was overly broad and could inadvertently harm the digital ecosystem. One major criticism was that the Bill cast too wide a net in defining which companies would be regulated. By using blunt size-based criteria, the SSDE designation might encompass not only foreign tech giants but also large Indian digital firms and even medium-sized companies that meet the thresholds, regardless of whether they truly hold monopolistic market power. Stakeholders feared that innovation champions could be branded as SSDEs merely for being successful, and then hamstrung by compliance burdens. Moreover, the Bill's qualitative designation provision, an SSDE if it met undefined tests of significant impact even without hitting numeric thresholds, was seen as a source of legal uncertainty and potential regulatory overreach. Businesses warned this could lead to an *ad hoc* regime where it's unclear which companies will be targeted, possibly deterring investment due to the regulatory uncertainty.

Another set of concerns focused on the *per se* prohibitions in the DDCB. By outlawing certain practices across the board, the Bill failed to account for situations where those practices might be competitively benign or even beneficial to consumers. For instance, bundling products or integrating services can be efficient and pro-consumer in many cases, providing convenience or improved functionality.[52] Likewise, a degree of self-preferencing, like promoting one's own newly launched feature on a platform, might be competitively neutral unless done by a dominant firm to the detriment of competition. The DDCB's blanket bans did not allow any business justification" defence for SSDEs. This was a deliberate departure from normal competition law, which usually assesses context and rationale, but it struck some experts as too "heavy-handed".[53] The stakeholders noted that each of the nine listed practices is not necessarily anti-competitive *per se* and often examined under a rule-of-reason; thus, painting them all with the same brush could have unintended consequences. For example, preventing an SSDE from any tying or integration might disallow even benign product improvements or bundling that consumers value. Critics argued the Bill risked over-correcting the problem, protecting competition at the cost of innovation and efficiency.

There were also practical and institutional concerns. The obligations in the Bill, such as ensuring interoperability, sharing certain data, or altering algorithms for fairness, are complex to administer. Therefore, CCI would need vastly expanded capacity and

52 Konark Bhandari, "Assessing the Nine Anticompetitive Practices Under the Draft Digital Competition Bill" (Carnegie India, 21 Aug. 2025), *available at*: https://carnegieendowment.org/research/2025/08/assessing-the-nine-anticompetitive-practices-under-the-draft-digital-competition-bill?lang=en(last visited on Oct. 23, 2025).

53 Information Technology and Innovation Foundation, "2024 India Digital Competition Bill" (ITIF, May 2024) 4, *available at*: https://www2.itif.org/2024-india-digital-competition-bill.pdf(last visited on Oct. 23, 2025).

expertise to monitor tech giants in real-time and issue compliance orders. The regulatory cost and burden of enforcement could be high.[54] Without significant investment in a specialized digital markets unit, as the standing committee had suggested, implementation could be patchy, potentially leading to either over-enforcement. For example, stifling businesses with red tape or under-enforcement. Additionally, potential overlaps and conflicts with other laws were highlighted. India recently passed the Digital Personal Data Protection Act, 2023 ("DPDPA") to govern data practices, and has sectoral regulators for telecom, IT, consumer protection *etc.* The DDCB's provisions on data use, app side-loading, etc., might conflict or duplicate these regimes.[55] For example, if an SSDE is ordered by CCI not to combine data across services without consent, that's akin to a privacy rule; ideally, such provisions should gel with the DPDPA enforced by a separate Data Protection Board. Similarly, obligations on app stores or e-commerce might overlap with Information Technology Ministry rules or consumer law. The draft Bill did not make clear how such jurisdictional overlaps would be managed, raising the risk of regulatory fragmentation.

By mid-2024, as these debates unfolded, the government initiated wider consultations. The MCA engaged with industry bodies and other ministries, and even MeitY (Ministry of Electronics and IT) held discussions given the interplay with digital policy.[56] Global tech companies reportedly lobbied intensely, some warning that an overly stringent law would make India less attractive for investment and could lead to unintended consequences such as reduced offerings or higher compliance costs for digital services. They pointed out that India's digital economy was still growing and had fierce competition in several segments. For instance, multiple players in fintech, e-commerce, and ride-hailing suggest that market failure was not evident in many areas. On the other side, voices from Indian start-ups and consumer advocates argued that without *ex-ante* rules, the dominant platforms' stranglehold would only grow and Indian innovators would always be at the mercy of a few gatekeepers.

Withdrawal of the Draft Digital Competition Bill, 2024

In August 2025, after a year of deliberation and amidst these conflicting viewpoints, the Indian government decided to withdraw the DDCB. This decision followed a new

54 Aakriti Bansalon, "Challenges Ahead for CCI's Digital Markets Division as AI and Data Focus Meets Staffing Gaps" (*MediaNama,* Aug. 12, 2025), *available at:* https://www.medianama.com/2025/08/223-cci-digital-markets-capacity-building-unit-staffing-gaps-goals/(last visited on Oct. 23, 2025).

55 Aparna Mehra, "Digital tug of law: Mind the overlap of jurisdictions – India's Draft Digital Competition Bill and the DPDP Act" *Trilegal Insights* (Nov. 3, 2025), *available at*: https://trilegal.com/news-insights/thoughtleadership-aparna-livemint-competitionbill-digital-tugofwar/(last visited on Oct. 23, 2025).

56 "India Pauses Ex-Ante Proposal for Digital Markets: Parliament reviews Digital Competition Bill" *MediaNama* (Aug. 11, 2025), *available at*: https://www.medianama.com/2025/08/223-parliamentary-report-digital-competition-bill-delayed/(last visited on Oct. 23, 2025).

round of examination by the same Parliamentary Standing Committee on Finance, which in its 25th Report (August 2025) reviewed stakeholder feedback and recommended that the Draft Bill be put on hold and reworked.[57] The Standing Committee's reconsideration cited multiple issues: the broad scope and rigid nature of the *ex-ante* obligations could unduly burden digital platforms without sufficient market analysis[58] there were serious fears of stifling innovation and deterring investment, particularly foreign investment in India's tech sector, at a time when the country seeks to be a global digital hub. The committee pointed out that the SSDE designation lacked clear, context-specific thresholds suited to India's market and might sweep in even legitimate mid-sized digital enterprises, creating compliance drag without commensurate benefits.[59] Overlaps with existing laws, such as the IT Act, consumer protection law, and sectoral regulators were flagged, echoing concerns that an unfine-tuned DCB could lead to regulatory conflicts and uncertainty.[60]

Notably, officials from the MCA and CCI, in their submissions to the committee, did not oppose the idea of a digital competition law but urged a calibrated, evidence-based, India-specific approach. They suggested learning from the EU DMA's initial shortcomings and also making use of the freshly amended Competition Act's tools like settlements and commitments before layering on a new regime.[61] The Competition Amendment Act, 2023, had introduced mechanisms that could potentially achieve faster resolution of antitrust issues. For instance, the CCI could accept commitments from an investigated party to change conduct without finding a violation, or settlements after a preliminary finding, which might expedite remedies in app store or online marketplace cases. The presence of these new tools gave reason to see how far the existing law could address the issues if used proactively.

Ultimately, the government announced it would withdraw and reconsider the Draft DCB, opting first to conduct a detailed market study on digital competition in India.[62] The idea is to empirically determine where *ex-ante* rules are truly necessary and to

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57 "Why India Withdrew the Digital Competition Bill 2024" *MediaNama* (2 Aug. 2025), *available at*: https://www.medianama.com/2025/08/223-india-digital-competition-bill-2024-withdrawal/(last visited on Oct. 23, 2025).

58 "Centre May Drop Ex-Ante Rules From Digital Competition Bill" *MediaNama* (11 Aug. 2025), *available at*: https://www.medianama.com/2025/08/223-centre-ex-ante-rules-digital-competition-bill/(last visited on Oct. 23, 2025).

59 *Supra* note 57.

60 Aakiti Bansal "India Pauses Ex-Ante Proposal for Digital Markets: Parliamentary Report Delays Digital Competition Bill" *MediaNama*, (13 Aug. 2025), *available at*: https://www.medianama.com/2025/08/223-parliamentary-report-digital-competition-bill-delayed/ (last visited on Oct. 24, 2025).

61 *Supra* note 23.

62 "Withdrawal Symptoms: The Briefing for 12 August 2025", *Global Competition Review*, (Aug. 12, 2025), *available at*: https://www.globalcompetitionreview.com/article/withdrawal-symptoms-the-briefing-12-august-2025 (last visited on Oct. 11, 2025).

design any future bill with more precise targeting of problems. This pivot reflects a cautious approach, regulators want to avoid rushing into a law that could have unintended economic downsides, instead gathering data to justify and shape interventions. The stated intent is to reintroduce a refined bill later, one that balances innovation and competition and is aligned with India's developmental goals. In the interim, the government emphasised it remains committed to fair digital markets but will pursue it via existing laws and incremental policy tweaks rather than a sweeping new act.

V Conclusion

The withdrawal of the DDCB in 2025 has sparked sustained debate on whether this decision reflects regulatory prudence or a missed opportunity in the governance of India's digital markets. On balance, the decision to halt the Bill appears justified as a cautious and deliberate step, given the structural and conceptual shortcomings identified in its original design. Given the high stakes, the digital sector is a vital driver of innovation, investment, and consumer benefit in India. It was arguably wise not to rush into a law that industry and experts warned could inadvertently "throttle" innovation or impose excessive compliance costs on businesses across the board.[63] In this sense, the withdrawal was not a renunciation of the goal of fair digital markets, but a strategic retreat to ensure any future framework is evidence-backed and appropriately scoped.[64]

However, this justification cannot be viewed in isolation from the competitive realities of digital markets. From another perspective, the withdrawal represents a deferred opportunity to address pressing competition concerns that *ex-post* enforcement under the Competition Act may not remedy promptly. Prolonged investigations and litigation risk allow dominant digital firms to further entrench their market power, thereby disadvantageous start-ups and smaller competitors. Concerns regarding irreversible market tipping highlight that regulatory caution is defensible only if it is temporary and purposive. Reconciling these positions requires recognising that a pause without prompt recalibration risks converting prudence into paralysis. Unless followed by targeted refinements, narrower *ex-ante* obligations, or interim safeguards, the withdrawal may ultimately undermine competition in precisely those market segments where early intervention is most critical.

Suggestions

Going forward, the challenge for India is to chart a middle path that captures the benefits of an *ex-ante* approach while avoiding its excesses. Several policy suggestions emerge for the next steps:

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63 *Supra* note 58.

64 "Parliamentary Report Traces How Ex-Ante Rules for Digital Competition Bill Lost Momentum"*MediaNama*, (13 Aug. 2025), *available at*: https://www.medianama.com/2025/08/223-parliamentary-report-digital-competition-bill-delayed/(last visited on Oct. 11, 2025).

i Conduct a focused market study

As planned, authorities should carry out in-depth market studies on specific digital sectors (*e.g.* app stores, e-commerce marketplaces, online advertising) to identify where competitive harms are most significant and persistent. This evidence should guide which *ex-ante* rules are truly necessary. A targeted approach could replace blanket prohibitions with context-specific obligations. For example, if the study finds recurring self-preferencing issues in app stores and e-commerce, a rule against self-preferencing can be calibrated to those contexts. This ensures the new law addresses clear market failures and is resilient to legal challenge or overbreadth criticisms.

ii Refine the definitions

Any future bill should set clear thresholds and criteria for the designation of regulated entities, ideally linked to measures of market power in India rather than just global size. This could involve a combination of quantitative metrics (India-based revenue or user numbers above a high threshold) and qualitative assessments of a firm's gatekeeper role in a critical "core" digital service. The qualitative element must be well-defined, for instance, factors like lack of competitive alternatives, dependence of ecosystem on the platform, *etc.*, to prevent arbitrary designations. A more precise definition will assuage business uncertainty and focus the law on truly systemic players.

iii Allow pro-competitive justifications

To avoid the rigidity of the withdrawn Bill, the reworked framework could incorporate a mechanism for "objective justification" or "efficiency defence." In other words, an SSDE could be allowed to demonstrate that in its particular case, a normally prohibited practice has pro-competitive effects or is indispensable to a certain innovation. As suggested by commentators,[65] including a business justification clause or a provision for the CCI to grant exemptions in justified cases would inject some rule-of-reason flexibility into the regime. This can prevent over-deterrence of legitimate business conduct while still banning clearly harmful practices in general.

iv Strengthen the CCI's power

Even without a new law, the CCI can be empowered to be more effective in digital markets. The standing committee had presciently recommended a specialised Digital Markets Unit within CCI.[66] Pursuing this, the CCI could recruit or train personnel

65 Carnegie Endowment for International Peace, "Assessing the Need for a New Draft Digital Competition Bill in the Indian Context" 8 (Konark Bhandari, Feb. 19, 2025), *available at*: https://carnegieendowment.org/research/2025/02/assessing-the-need-for-a-new-draft-digital-competition-bill-in-the-indian-context?lang=en(last visited on Oct. 24, 2025).

66 Parliamentary Standing Committee on Finance summary, "Evolving Role of Competition Commission of India" (Aug. 11 2025), *available at:* https://prsindia.org/files/policy/policy_committee_reports/Report_Summary-Evolving-Role-of-Competition-Commission-of-India.pdf(last visited on Oct. 24, 2025).

with expertise in digital technology, algorithms, and data analysis. It can also ramp up the use of its new settlement/commitment powers for quicker outcomes, for example, if app store abuse is found, seek a binding commitment from the platform to change policies as the EU did with some cases pre-DMA rather than protracted litigation. Additionally, the CCI should continue and expand its market studies, like the ones it did on e-commerce and telecom sectors, to proactively understand digital market trends. These steps would improve *ex-post* enforcement speed and efficacy, somewhat blunting the urgency for an *ex-ante* law and ensuring that if one is enacted, the agency is ready to implement it.

v Incremental and collaborative regulation

Instead of one omnibus bill, India could initially implement sector-specific rules or codes of conduct for pressing problem areas. For instance, App Store Guidelines, possibly under existing IT law or competition law, could be issued to mandate fair practices on commission rates, payment choices, *etc.*, drawing from South Korea's approach for mobile ecosystems. Similarly, an E-commerce Platform Code could be developed focusing on platform neutrality and data use. These targeted interventions, developed in consultation with stakeholders, can deliver relief faster and serve as pilots for a broader law. They also let regulators collaborate *e.g.,* the CCI working with the IT Ministry and consumer protection authority to ensure consistency and avoid overlap.

vi Periodic reassessment and sunset clauses

Given the fast pace of digital innovation, any new regulatory measures should be reviewed periodically. The law could include sunset clauses or mandatory review provisions for the *ex-ante* rules, meaning that their necessity and impact must be re-evaluated every few years. This keeps the framework agile and capable of adapting (or terminating rules) if they prove unnecessary or too burdensome, thereby addressing the concern of locking in rigid regulations that might become obsolete.

In conclusion, the withdrawal of the DCB was largely a course correction acknowledging that the first draft, while addressing genuine concerns, may not have been the optimal solution for India's complex digital economy. Rather than a failure, it can be seen as an opportunity to get the regulation right. India's aim of a "fair, transparent, and contestable" digital market remains paramount.[67] Achieving this will likely require a combination of smarter *ex-ante* rules and vigorous *ex-post* enforcement. A calibrated framework, built on the lessons from the draft's critique and global experiences, can ensure that India reaps the benefits of its digital revolution while

67 *Supra* note 57.

safeguarding competition and innovation. The journey of the DCB, though momentarily paused, has already advanced the conversation and laid the groundwork for future policy, one that strikes the right balance between curbing digital monopolies and fostering digital innovation in the years to come.

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