“Critical Analysis of Indian Markets and the Digital Competition Bill, 2024”

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Submitted by

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DECLARATION

I, Puja Bhattacharjee hereby declare that the Dissertation work titled "Critical Analysis of Indian Markets and the Digital Competition Bill, 2024" is an original work done by my me under the supervision of Dr. Harshita Kulkarni, School of Law, Governance and Public Policy, Chanakya University, Bangalore.

I further declare that to the best of my knowledge this LL.M. Dissertation does not contain any part which has been submitted for the award of any degree either in this University or in any other Institutions without proper citations. It is further declared that all the sources of information used in the dissertation have been duly acknowledged. I understand that the dissertation may be electronically checked for plagiarism by anti-plagiarism software to assess the originality of the submitted work.

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This is to certify that the dissertation titled **"Critical Analysis of Indian Markets and the Digital Competition Bill, 2024"** submitted by **Puja Bhattacharjee**, bearing Registration Number **24PG00010** in partial fulfilment of the requirements for the award of the Master of Laws (LL.M.) Corporate and Commercial Laws, at Chanakya University, Bengaluru, is an original work carried out under my guidance and supervision.

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Place: Bengaluru

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List of Abbreviation

ACP	Anti-competitive Practices
AICO	American Innovation and Choice Online Act
ARC	The German Act against Restraints of Competition
BIAC	Business and Industry Advisory Committee of OECD
BIS	Bureau of Indian Standards
CA, 2002	The Competition Act, 2002
CAGR	Compound Annual Growth Rate
CCI	Competition Commission of India
CDCL	Committee on Digital Competition Law
CLRC	Competition Law Review Committee
CPA Act, 2019	The Consumer Protection Act, 2019
DG	Director General
DMA	The Digital Markets Act, 2023
DOJ	Department of Justice
DPDP Act	The Digital Personal Data Protection Act, 2023
ECIPE	European Centre for International Political Economy
EDI	Electronic Data Interchange
EU	European Union
FTC	Federal Trade Commission
IT Act, 2000	The Information Technology Act, 2000
IT Intermediary Rules	The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021
MCA	Ministry of Corporate Affairs
MRTP	The Monopolies and Restrictive Trade Practices Act, 1969
OAMA	The Open App Markets Act
OECD	Organisation for Economic Co-operation and Development
SAMR-	The State Administration for Market Regulation
SPDI Rules, 2011	The Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011
TFDP	Transparency and Fairness of Digital Platforms Act
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UPI	Unified Payment Interface

Chapter-1

Introduction

1.1 Overview

"Digital Marketplace" – a unique mode of business for accelerating the economic growth- has considerably transformed the definition of "marketplace" from the 1990s. Although the growth of the digital sector began in 2000 in India, it gained significant momentum in the past decade, particularly after the Covid-19 pandemic, emerging as the preferred mode of marketplace and reaching a wide audience. Digital Marketplace, as the name suggests, is fundamentally different from the traditional markets. The exponential growth of the Digital Marketplace has led to new market dynamics. The convenience of obtaining essential and luxury items from the comfort of home has also been considered one of the most important reasons for growth of this industry. With the passage of time, the digital marketplace is achieving milestones and taking shape as one of the largest contributors to the growth of the nation.

As the second most populous country in the world, India offers a lucrative market to the Digital Marketplace players; hence, multinational corporations are targeting India as their preferred destination. In conjunction with this, Government's "Digital India Campaign" has acted as a catalyst for the phenomenal growth of this industry. Alongside multinational conglomerate, numerous Indian-origin start-ups are also emerging with their aspirations to tap into this enormous market. In the past decade, numerous international players have started catering to the Indian market, such as Amazon India, eBay India, AliExpress. Alongside them, there are also a few home- grown players who are trying to reap the benefits of this growing market, such as Tata Cliq, JioMart, Nykaa and AJIO. As stated in the 53rd Report of the Parliament Standing Committee, "India's consumer digital economy is expected to become a US$ 1 trillion market by 2030, growing from US$ 537.5 billion in 2020, driven by the strong adoption of online services such as e-commerce and ed tech in the country". The Indian digital marketing market size is likely to grow at a Compound Annual Growth Rate of 38.9% during 2024-2030.[1] In recent times, on numerous occasions,

[1] *India Digital Fabric Printing Market size* is anticipated to grow at a CAGR of 11.1% during 2024-2030 (January, 2025), Available at: https://www.researchandmarkets.com/reports/6057021/india-digital-fabric-

the Government of India has affirmed its intention toward the growth opportunities of the digital marketplace sector. Moreover, the Government initiatives and priorities have also been clearly communicated in its recent announcements and budgetary sessions.

Conversely, the sector is under scrutiny by the legislators for its growing involvement in anti-competitive transactions. The digital marketplace is expanding exponentially and with this growth, new complexities are emerging that could lead to potential challenges in the future. As this industry advances, new challenges arise daily for legislators. The dominant position of selected market players has created profound suspicion among lawmakers, highlighting the need for dedicated legislation related to the digital marketplace. In 1890, by passing the "Sherman Anti-trust Act, 1890" United States of America initiated a new era in the marketplace. Following that trend, other nations also enacted their domestic antitrust law, however with the passing of time and with the change in the market dynamics, a need for revisiting the existing legislation is also felt. With the advent of the era of digitalization, it has become immensely important for the legislatures to promulgate a law which can prevent anti-competitive transactions and ensure contestability. In recent times, the growing preference towards the "ex-ante" regulatory mechanism by legislatures in various jurisdictions, has opened a plethora of discussion and deliberation among different stakeholders in the Digital Marketplace. The European Union has enacted a notable piece of legislature in this regard: the "Digital Markets Act (DMA)", which is regarded as the first kind of ex-ante regulation aimed at curbing anti-competitive transactions and promoting contestability. While the ex-ante regulation in the UK and the USA is pending approval, Japan, South Korea and Australia have already promulgated the legislation relating to ex-ante regulation. The primary rationale behind enacting separate legislation for digital marketplace is to foster a free market and promote contestability. Although the concept of contestability has been interpreted in different ways by different jurists. The term "contestability" is an economic concept; it has extensive usage in the competition

printing-market-revenue?srsltid=AfmBOoqIvf9KK49wURLSukG-sFNhAWe4ptBzNdfl03-0N0ZOM1AqA7Nt, (Last accessed on 05.05.2025)

jurisprudence. While the main purpose of enacting the DMA is to protect contestability, it is majorly criticized for its vagueness.[2]

In comparison with global competition laws, India was late in enacting its domestic competition law, with the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP) coming into force in 1970. However, the MRTP act was repealed and replaced with the Competition Act, 2002 (CA, 2002) due to the liberalization and opening of the market in the late 1990s. The extant competition legislation of India is comparatively latest; however, the extant act is not adequately equipped to handle the complexities that have arisen due to challenges posed by the digital marketplace. Accordingly, in line with international legislation, to combat issues pertaining to digital marketplace and to standardize the digital marketplace, India is in process of considering and implementing a series of new policies and laws that will revamp the Indian digital marketplace and steer the economic growth of the country. The agenda behind implementing these laws to enforce full disclosure and consumer protection, upholding ethical standards in the digital space. India has a long history of antitrust related laws. The MRTP was the first legislation enacted to "command and control" the economy. However, liberalization paved the way for the CA, 2002, which is the successor of the MRTP Act. According to the recent global trend, the "ex-post" regime of the extant competition law is not well equipped to combat the challenges of the digital marketplace.

With the latest growth, the main challenge posed before the legislators in different jurisdictions is how to maintain contestability in the digital market. Considering the challenge, the Parliamentary Standing Committee on Finance presented the 53rd Report on "Anti-Competitive Practices by Big Tech Companies" before the Lok Sabha on 22nd December 2022, which paved the way of formation of "Committee on Competition".

[2] Matthias Bauer, Dyuti Pandya & Vanika Sharma, 'EU export of regulatory overreach: The case of the Digital Markets Act (DMA)', Available at: https://www.wita.org/atp-research/eu-regulatory-dma/ (Last Accessed on: 15.04.2025)

The Ministry of Corporate Affairs constituted the Competition Law Review Committee (CLRC)[3] to review the existing competition law and amend the substantive provisions to combat the concurrent issues relating to the competition. Based on the recommendations of the CLRC, the extant Competition Law has been amended in 2023 to address a few challenges posed by the digital market players. However, the CLRC has identified the Indian Digital market as nascent, to frame a dedicated law for the digital marketplace. Conversely, increasing complaints against big tech companies and growing concerns from multiple stakeholders led to the constitution of the "*Committee on Digital Competition Law*"[4] (*CDCL*). The reason behind the formation of the CDCL was to study the growing consensus among various jurisdictions regarding the need for an ex-ante regulatory mechanism instead of an ex-post regulatory mechanism and increasing anti-competitive practices by few identified big corporations.

Of late in multiple occasions, "Competition Commission of India (CCI)" has intervened to regulate anti-competitive practices adopted by numerous corporations. Although an important question remains unanswered - whether the CCI is adequately manned to address the significant concerns arising from the growth of digital market players. The main concern relates to the time taken by the CCI to pronounce its orders. The core issue is whether the CCI is equipped to handle these sorts of challenges.

From recent trend it is quite clear that the business stake in digital marketplace is concentrated among few corporations in India. To decentralize the concentration of power, it is required to consider a few progressive steps which can contribute to the growth of the economy.

After comprehensive study of international regulations and growing concerns in digital marketplace, CDCL has proposed an "ex-ante" regime to supplement the "ex-post" regime

[3] CLRC was set up on 1st October, 2018, submitted its report on 26th July, 2019, Available at: https://www.ies.gov.in/pdfs/Report-Competition-CLRC.pdf, (Last accessed on 16.04.2025)
[4] The CDCL was constituted by the Ministry of Corporate Affairs on 6th February, 2023 and submitted its report on 27th February, 2024, Available at: https://prsindia.org/files/parliamentry-announcement/2024-04-15/CDCL-Report-20240312.pdf (Last accessed on 16.04.2025)

as prescribed under the CA, 2002. However, the proposed "ex-ante" regulation is being criticized by different stakeholder for various reasons. The main argument opposing "ex-ante" regulation is that the rigid and backward-looking regulation of the ex-ante regime, will limit the scope of innovation, and it will increase the chance of broadened scope of interpretation which will increase misery of corporations.

The European Union's Digital Market Act has already been criticized due to its ambiguous parameters and profound chances of broader interpretation. However, the Digital Markets Act is regarded as a pathbreaking law to maintain contestability in the digital marketplace. The fundamental question arises here is do a controversial "ex-ante" regime can achieve desired success in the nascent digital marketplace of India? Will the "ex-ante" regime work adversely with the growth objective of Indian economy? Do we need an innovative solution for the developing Indian market, which can eventually be modeled for the developing economies?

These pertinent questions will be delved into in this research paper. To understand the needs of the Indian economy, a detailed study is carried out on the extant legislations adopted by nations around the globe, and appropriate measures are recommended to address the present challenges. Another major question examined in this research paper is whether India needs to follow the global market leaders or can adopt a unique policy that addresses both market challenges and the growing needs of the economy. If the answer to this question is affirmative, the recommended policy is also considered in this research paper.

1.2 Statement of Problem

At this juncture, as India is in the process of shaping its digital marketplace, which is a key determinant for the acceleration of economic growth, we do not have dedicated legislation to regulate the digital marketplace, which is prone to anti-competitive practices. Due to immense pushbacks from the market players, the proposed Digital Competition Bill is on the verge of withdrawal. Hence, at this moment, a comprehensive study needs to be carried out to understand the Digital Marketplace and evaluate the effectiveness of the proposed

Digital Competition Bill in overcoming the challenges posed by the inherent traits of the digital marketplace.

1.3 Hypothesis

Strategic amendments to the Competition Act, 2002 are imperative to broaden its regulatory framework and effectively address the complexities introduced by digital market participants. Such revisions will strengthen the Act's capacity to mitigate anti-competitive behaviors, promote fair market practices, and safeguard consumer welfare within the evolving digital economy. Updating the legislation is crucial to ensure that regulatory mechanisms remain robust and responsive to the dynamic challenges posed by technological advancements and digital business models.

1.4 Objectives

i. To understand and analyze whether dominant digital market players are abusing their dominant position, and to examine recent trends and problems arising from the actions of these dominant players in the digital market.
ii. To understand the reasons why the extant regulatory regime is failing and to critically analyze the impact of promulgating a dedicated law for digital market players.
iii. To understand whether India need an ex-ante regime in competition jurisprudence.
iv. To analyze proposed draft bill to understand its effectiveness.
v. To find a fine balance between the extant regulatory landscape and the proposed bill, to formulate an effective law.

1.5 Research Methodology:

This research aims to explore the complexities of present digital market players and evaluate the effectiveness of the proposed Digital Competition Bill in addressing the challenges posed by various anti-competitive practices adopted by the Digital Market players. Due to time constraints, a doctrinal research method has been adopted, involving a detailed analysis of the report submitted by the Committee on Digital Competition, the extant legal framework applicable to the digital market players, equivalent foreign legislations, and various judicial decisions during the course of the study. This approach

enables an inclusive understanding of the present intrinsic issues in the digital market, the impact of the proposed bill, and the probable alternative solutions that can be adopted to address these issues.

CHAPTER II

EVOLUTION AND GROWTH OF DIGITAL MARKET

2.1 Understanding the "Digital Marketplace"

In general parlance, a marketplace refers to a platform that provides a medium for exchange of goods, services and information. A few decades ago, the word "marketplace" was used interchangeably with the traditional marketplace where goods or services were exchanged through the physical meeting of the buyers and sellers. In the traditional marketplace, the trade and business were mostly centralized within the domestic boundary. With its own traits and qualities, the traditional marketplace dealt with its own issues and complexities. With the advancement of technology, the concept of marketplace has evolved, and a new concept has emerged which is known as the "Digital Marketplace". The digital marketplace is characteristically quite different from the traditional marketplace and, at times, is considered far more complex than the traditional marketplace. While there is no explicit or definite definition of a "Digital Marketplace", references to it can be found in multiple acts, laws or regulations. In general, a digital marketplace is an online platform that facilitates the transaction between buyer and seller. The digital marketplace acts as an intermediary, allowing sellers to advertise or promote their products to sell to the prospective buyers without any personal interaction. It is considerably different from the traditional brick-and-mortar galleries, where sellers have the option to showcase their products, and buyer has the opportunity to inspect and satisfy themselves personally before making a purchase. Basically, the digital marketplace works as an aggregator, which connects heterogenous buyers and sellers.

One of the major characteristics of the digital marketplace that has garnered considerable attention is its opening of markets for international trade and business, connecting buyers and sellers from different parts of the globe. With the emergence of the digital marketplace, it is now possible to procure any product or avail of any services from any part of the globe, from the comfort of the home. Trade and business have crossed all borders, and they have crossed the boundaries of nations with the advent of technological advancement. With its rapid growth, digital market players have not only created a positive impact on the growth of the economy, but it has also created convenience for consumers. The digital marketplace

facilitated market expansion, enabling consumers to procure products from any location without being physically present at that place. Globalization has worked as an accelerator for the growth of the digital marketplace. Cost effectiveness is regarded as one of the most attractive reasons why sellers prefer digital marketplace over traditional ones. The absence of fixed costs in the digital marketplace is the key reason for the growth of the digital marketplace. Whereas the major cost of the traditional marketplace is the fixed cost. Digital marketplace has transformed the landscape of the marketplace, and it has opened up a different arena to generate revenue and to cater needs of the various groups.

With all its positive aspects, the digital marketplace brings certain challenges; the main drawback of the digital marketplace is the accumulation of power in the hands of the few. This phenomenon is not distinct to any particular jurisdiction; rather, it's a global scenario and most nations are combating this issue of late. Large digital market players are adopting various measures to maximize their benefits that have eventually created many anti-competitive practices, which are posing challenges to the fair market contestability. With the surge in the number of internet users[5], the consumers of the digital marketplace are increasing by leaps and bounds. With the increase in the number of consumers and the continuous increase in dependency on the digital platform, the number of sectors operating under the umbrella of the digital marketplace is increasing. Consequently, the complexities of this sector are also growing. The cornerstone of the digital marketplace is data and with the high quantum of data, digital market players are dominating the market by adopting unfair trade practices. Recently, regulators in different jurisdictions have been flooded with complaints about digital market players; however, as the economics of nations are largely dependent on the success of the digital marketplace, governments of different nations are trying to find a fine balance by working towards a robust framework that can supplement the growth of the digital marketplace.

[5] The Meteoric Rise of Digital Marketing in India, IBEF Blog, Available at: https://www.ibef.org/blogs/the-meteoric-rise-of-digital-marketing-in-india, (Last accessed on: 05.05.2025)

2.2 History of digital marketplace- - Global perspectives

The digital marketplace may be a recent terminology in India; however, it is not so latest for the other parts of the globe. The western world has been familiar with this terminology for the past few decades. The history of the digital marketplace can be traced back in the 1960s with the introduction of electronic data interchange (EDI). It took decades to unfold, evolve and take its present form. There were many milestones and achievements in the growth journey of the digital marketplace. The evolution of digital marketplace can be segregated into different phases, as detailed below.

i. **Inception Phase**: The initial phase of the digital marketplace was started in the 1960s. Although the steppingstone of the digital marketplace was the introduction of EDI, the major breakthrough came in the year 1965 with the introduction of wide-area-network communication. The growth journey of the digital marketplace continued, and the introduction of the concepts of "Shopping cart" and "Electronic Fund Transfer"[6] in the 1970s marked important milestones of the digital marketplace.

ii. **Development Phase:** The significant growth of the Digital Marketplace started from the 1990s, this phase is regarded as the rise of the industrial giants. In this phase Amazon, Alibaba, Paypal started their business operations. Amazon started its business as an online bookstore in 1994 and eventually emerged as an all-in-one solution in the e-commerce sector. Another giant digital marketplace, e-Bay started its operation as an online auction platform in 1995 and emerged as the most popular e-commerce sites. In 1999, Alibaba started its global operations. Since then, all these online service providers have evolved and became the market leader, dominating online traction.

iii. **Growth Phase:** The phase starting from 2010 onwards can be termed as the transformation phase as this phase witnessed immense innovation, technological

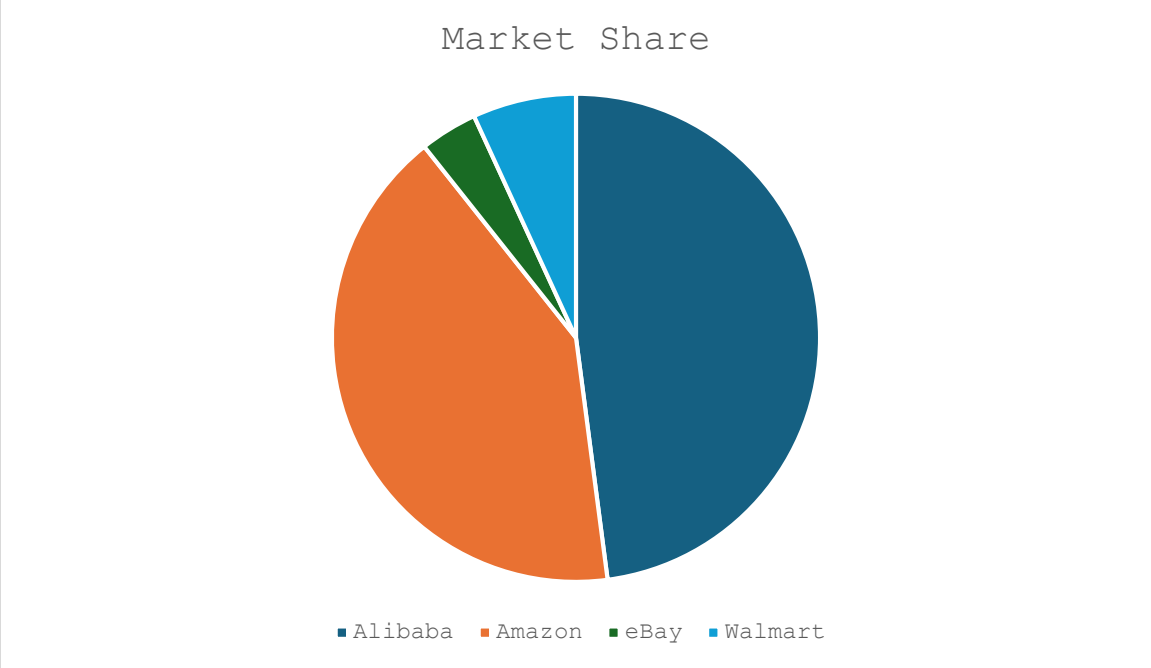
[6] By Micael Abiola, E-commerce History, How It All Began, Available at: https://hostadvice.com/blog/monetization/ecommerce/history-of-ecommerce/ (Last accessed on: 16.04.2025)

advancement etc. The surge in usage of smartphones and penetration of the internet have played a key role in the growth of the digital marketplace.

iv. **Current Phase:** The current phase of the digital marketplace was initiated by the Covid-19 pandemic, which has played the role of a catalyst in the growth of the e-commerce sector. Although we have crossed that phase, the comfort of ordering from the leisure of home has changed our perspective, and the focus has shifted from the traditional market to the digital marketplace. The paradigm shift in the mindset of consumers to move from the traditional market to digital marketplace is the key rationale behind the growth of this sector. Another key factor for the growth of this sector is the surge in the number of internet users. The shift in focus of consumers is supplemented by the growth of artificial intelligence and blockchain technology. The rising usage of social media has played a pivotal role in attracting the attention of consumers towards the digital marketplace.

At present, the e-commerce sector is a trillion-dollar economy, and the following are the key players of this industry[7]-

Chart-1



[7] Shreya Nougarahiya, Gaurav Shetty and Dheeraj Mandloi, A Review of E-commerce in India: The Past, Present and the Future" Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3809521, (Last accessed on 17.04.2025)

As a source of revenue and opportunity generator, the digital marketplace has garnered a host of attention from the governments of numerous nations and accordingly, a lot of developments in the regulatory regimes can be observed in this sector.

2.3 History of Digital Marketplace in India

Although India is one of the top ten largest digital marketplaces in the world, this sector is still in a nascent stage in India due to its slow start in the Indian market. During the initial days, the digital marketplace faced certain difficulties, the main reason behind the slow growth was the cultural differences between western world and traditional mindset of the Indian consumers. It took time to shift the preference of Indian consumers from traditional marketplaces to digital marketplaces. Another major hindrance in the growth of the digital marketplace was the low penetration of the internet during that time. The e-commerce industry entered the Indian market with the B2B business model in the early 1990s. Although the initial days of the digital market were comparatively slow, it gained momentum with the entry of home-grown companies like Flipkart. This growth was further escalated by the entry of foreign players like Amazon and Alibaba.

The growth curve of the digital marketplace witnessed a sharp shoot up with the active participation of the government. The initiatives adopted by the Indian government have led to the success of the digital marketplace in India. The government's active participation in a digital India pushed Indian citizens towards the increased use of digital mediums, and that eventually inaugurated a new era, which often referred as a digital era. After closely monitoring the evolution of the digital marketplace in India, the growth phase of the digital marketplace in India can be segregated into the following phases-

2.3.1 Initial Phase: The growth and expansion of this sector began with the emergence of the internet in 1995. The initial phase of digitalization embarked on a turbulent journey, before it gained momentum. Internet service was launched by VSNL in India in that year, which is marked as the inception of the digital era for India. The initial phase of the digital market was relatively slow and the only area where the digital mode was being used was

the business-to-business sector. The main reason behind this slow start was cultural differences and apprehension regarding the impact of new technologies on the job market. After initial dilemma and with the assistance of government initiatives, the digital market started taking shape in India. A new chapter of e-commerce in India began with the digitalization of IRCTC in 2002.[8]

2.3.2 Growth Phase (2000 to 2015): During this phase, with the emergence of homegrown players like Flipkart and Snapdeal, a milestone was created in the growth of the digital marketplace. Along with the homegrown players, a few foreign giants like Amazon, eBay, and Alibaba entered the Indian market. As the second most populous nation in the globe, India is the preferred hub for the digital market players. Consequently, the foreign players tried to tap the market and with the assistance of the government, they witnessed exponential growth. To supplement the growth of this sector, a liberalized approach was adopted by the government and by easing the norms relating to FDI in the digital marketplace, a sizeable amount of investment was attracted. With the inflow of the ample amount of foreign investment, the digital sector witnessed a surge in its growth.

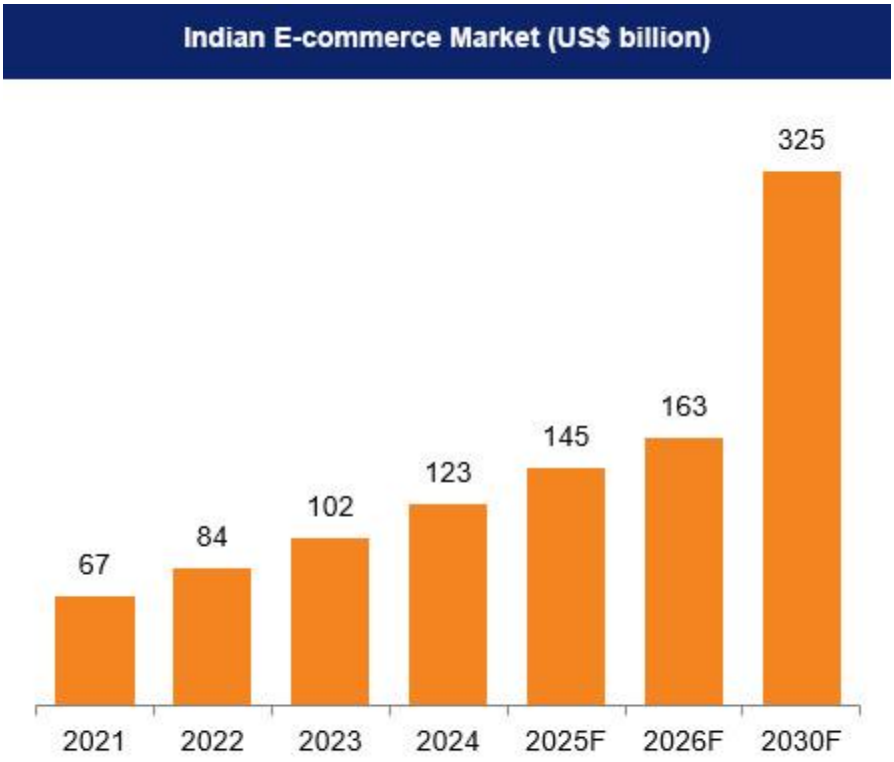
2.3.3 Current Phase (2020 onwards): A new era of the digital market players was unlocked with the Covid-19 pandemic, in India along with the rest of the world. The factors which worked in favour of this growth include a surge in the usage of smartphones, government's initiative towards digitalization, rapid internet penetration, and growing investment trend in the e-commerce industry among others. The start-up ecosystem of India was growing around the digital sector. In the initial period, the digital sector was centered around the retail sector; however, post-pandemic, digital players started entering other sectors, like cab aggregators, pharmaceutical sector, home essential sector etc. At present, the number of e-commerce users and the market size of the e-commerce industry are lucrative. The government initiatives like "Digital India" initiative are fueling the growth of the e-commerce sector. The growing dependency of the economy on the e-commerce

[8] E-commerce Market in India, Brickwork Research (October, 2024), Available at: http://brickworkratings.com/Research/E-RetailIndustryinIndia-Oct2024.pdf, Last accessed on: 18.04.2025

sector is working as a catalyst for the growth of this sector. Another important aspect contributing to the growth of this sector is the rapid promotion of the unified payment interface (UPI). With the rampant promotion by the government, the UPI system has been adopted by people from all levels, which has played a critical role in the growth of the digital sector.

Indian e-commerce market is expected to grow at a compound annual growth rate (CAGR) of 27% to reach $163 billion by 2026.[9] During past decade, with steady growth of the digital marketplace, it has attracted a sizeable amount of investment from indigenous and foreign investors.

Chart-2



Source: News articles, F- Forecasted

[9] E-commerce Industry Report, February 2025, Available at: https://www.ibef.org/industry/ecommerce, (Last accessed on: 20:04.2025)

Another important growth accelerator of the e-commerce sector is the rapid investment in this sector. The following are the key highlights of a few major investments in the e-commerce sector[10]-

I. Zepto funding (August, 2024)- *Quick commerce start-up Zepto has raised $340 million and increased its valuation to $5billion*.
II. Zomato Investment (June, 2024)- *Zomato has invested a total of INR 2300 Crore in Blinkit and acquired the latter.*
III. Flipkart funding (May, 2024)- *Flipkart has raised $350 million from Google.*

2.4 Decoding present dynamics of Indian Digital Marketplace

The present dynamics of the digital marketplace in India is complex as it is comprised of numerous players, catering to different categories of consumers. At present, the digital market is an inseparable part of the daily life of the consumers', the dependency and reliability on this sector not only eased the life of consumers, but it has also created mass job opportunities. The lives of millions of people are dependent on the digital market players; it has created job opportunities for a lot of people. *India is poised for massive growth, with India's quick commerce market expected to reach INR 43,435 crore by FY 25 and INR 86001 crore by FY 29*.[11]Hence, the growth and evolution of this sector is one of the primary responsibilities of the government. The type of digital markets in India can be categorized under the following headings-

2.4.1 E-commerce Retail Platform- Flipkart, Amazon India, Reliance JioMart are the major players under the retail e-commerce category. With rapid evolution, these brands positioned themselves as the market leaders in this category. Although, both Amazon and Flipkart have started as the online bookstore, however, by foreseeing the global trend, they

[10] E-commerce Industry Report, February 2025, Available at: https://www.ibef.org/industry/ecommerce-presentation, (Last accessed on: 21.04.2025)
[11] The Meteoric Rise of Digital Marketing in India, IBEF Blog, Available at: https://www.ibef.org/blogs/the-meteoric-rise-of-digital-marketing-in-india, (Last accessed on: 21.04.2025)

evolved as the retail players and shifted from online book selling to providing all products under the roof.

2.4.2 Digital Payment System- Digital payment interfaces are the key game changer for the digital market. At present, this digital payment system is used not only for the purchase of lavish items, but it has also become essential for everyday needs. Platforms like Google Pay, Phonepay, Paytm are the major players in this sector.

2.4.3 Digital Advertising Markets - Google ads and Facebook Ads are assisting businesses by providing targeted advertisements to attract consumer base. *With over 800 million internet users in the country, having a presence on social media and utilizing SEO techniques are crucial for enhancing brand visibility.*[12]

2.4.4 Social Media Platform- Facebook, Twitter, Instagram are famous names in social media. Apart from connecting people for social causes, these platforms are used to engage consumers for promotion of products and services.

2.4.5 Content Distribution Platform- These platforms are used to distribute digital contents. YouTube Netflix and Hotstar are prominent players under this segment.

2.4.6 Digital Service Platform- Ola, Uber, Zomato and Swiggy are famous platforms under this segment. Although they provide different services, the importance and share of businesses of these digital players are quite significant and they are contributing towards the growth of the digital sector.

2.4.7 Online Education Platform- Another important side of digital marketplace is online Education platforms. Byjus and Unacademy are major platforms under this segment. Online education system became a highly adopted concept from the Covid-19 time.

[12] (Anti) Trust Issues Harvard Law Bulletin, Fall 2024, Available at: https://hls.harvard.edu/today/antitrust-issues/ (Last accessed on: 21.04.2025)

The digital market players are an indispensable part of our life nowadays. Considering consumer dependency on this sector, it cannot be denied that this sector is the primary force behind the growth of the economy. During the present budget session in 2025, Finance Minister, Smt. Nirmala Sitharaman stressed on the government's commitment towards strengthening Indian digital economy through initiatives like AI-driven technologies and smart infrastructures.[13] The intention of government towards digital marketplace can be clearly accessed in their recent initiatives and proposals placed during recent budgetary session. This clearly shows the inclination of government towards growth and development of this sector.

2.5 Current Problems in the E-commerce Sector with regards to competition

The rapid growth of the digital marketplace has worked as a catalyst for the growth of the economy, at the same time it is posing fresh challenges before the regulators every now and then; along with all other challenges, the major challenge that can be clearly visible is the centralization of power in the hands of a few. This phenomenon is not unique to any specific nation; it is a common issue that almost all nations are facing in today's digital world. The same is prevalent in the Indian market as well. The number of players in the Indian digital marketplace are limited; that is enhancing chances of centralization of the power in the hands of a few and that is eventually creating dominance. If we deep dive into the present scenario of the digital marketplace of India, we can observe that market share is divided among few players and in multiple occasions they are creating barriers for the new entrants. Major players in digital platforms are Flipkart, Amazon India, Reliance, JioMart, Snapdeal and Meesho. The growing trend of centralization of power is not only creating barriers to the growth of this sector but is also creating hinderance for consumers.

The detailed discussion to deal with the centralization of power has already been under consideration for the past decade. The nations are already advocating for the rule-based approaches to confront the challenges posed by the digital market players on the

[13] Budget Session 2025: Key Highlights, Schedules and Reforms. https://pwonlyias.com/budget-session-2025/ (Last Accessed on 24.04.2025)

competition. With the rapid increase of the cases with regard to the abuse of the dominant position, adoption of anti-competitive practices by the large digital market players at different jurisdictions, forced the legislators of the different nations to look for a way to protect the interest of various stakeholders to maintain an optimum balance in the competition market.

Of late, large digital market players are facing multiple cases with regards to the abuse of the dominant position, adoption of anti-competitive practices in different jurisdictions. Large digital market players like Amazon, Apple, Google are already under the lens of the regulators.

To understand the market dynamics of the digital marketplace, we need to divide the digital marketplace on the basis of the segments, for example retail segment, food aggregators, cab-riding aggregators. The major players of the retail segment are Flipkart, Amazon, Myntra and Meesho, whereas the major players of food aggregators are Swiggy and Zomato and in case of cab-riding aggregator, major players are Uber and Ola. It has been observed in the past that these digital marketplace giants have adopted unethical practices to limit the entry of the new players into the market, including collusion with regards to price fixing.

This trend is not unique for India only; the situation is quite similar for other jurisdictions as well. After a dry spell in the anti-trust prosecution, recently the US government took a series of actions against four digital giants, and their action is the effort towards maintaining a pro-competitive environment in the digital sector. Apple, Google, Meta and Amazon are under scrutiny of the US anti-trust departments for the monopolistic approaches adopted by them.[14] In the first anti-trust case against Google, *the US District Court for the District of Columbia ruled that Google maintains a monopoly in online*

[14] Amazon, Flipkart breached antitrust laws: CCI, The Hindu, September 13, 2024, Available at: https://www.thehindu.com/sci-tech/technology/amazon-flipkart-breached-antitrust-laws-cci/article68637232.ece, (Last accessed on: 24.04.2025)

search.[15] In another case, the Federal Trade Commission (FTC) alleged that Meta had acquired Instagram and WhatsApp to centralize the competition in the social media within the company.[16] In a separate order, the Department of Justice (DOJ) claimed that Apple violates the anti-trust law and restricts other third-party applications that can compete with the Apple products.[17] The FTC in its separate investigation found that 40% of the market share of online sales are under the control of Amazon in the US, and that it indirectly controls the prices of the products. [18]

The situation in the EU is also similar to the US. Recently, the EU fined Apple and Meta, while the allegation against Apple was relating to the conduct of anti-steering provisions, the case against Meta is relating to the abuse of the dominant position.[19] The hefty penalty imposition exemplifies the inclination of the regulators towards fostering a pro-competitive market environment and prevent stifling of innovation.

The situation in India is also quite similar with the US and EU region, the anti-trust market regulating authority, i.e. the Competition Commission of India (CCI) is actively taking actions against the anti-competitive practices. The current threats of this sector can be observed by analyzing recent investigations conducted by the CCI with regard to the anti-competitive practices done by digital market players.

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[15] Alison Roller, Google antitrust case explained: What's next? Available at: https://www.techtarget.com/whatis/feature/Google-antitrust-case-explained-Whats-next (Last accessed on 1.05.2025)

[16] Muhammed Razik, *Meta Faces Antitrust Lawsuit Over its Acquisitions of Instagram and WhatsApp amidst Broader Tech Industry Crackdown*, Available at: https://www.livelaw.in/tech-law/meta-faces-antitrust-lawsuit-over-its-acquisitions-of-instagram-and-whatsapp-amidst-broader-tech-industry-crackdown-289526 (Last accessed on 02.05 2025)

[17] Makenzie Holland, Contempt order worsens Apple's antitrust woes, Available at: https://www.techtarget.com/searchcio/news/366623650/Contempt-order-worsens-Apples-antitrust-woes (Last Accessed on 02.05.2025)

[18] Matthew Cole Conover, FTC V. Amazon: A Turning Point for Antitrust Law? Available at: https://scholarlycommons.law.wlu.edu/crsj/vol31/iss1/8/ (Last Accessed on 02.05.2025)

[19] Alba Ribera Martinez, The DMA's Teeth: Meta and Apple Fined by the European Commission, Available at: https://competitionlawblog.kluwercompetitionlaw.com/2025/04/28/the-dmas-teeth-meta-and-apple-fined-by-the-european-commission/ (Last Accessed on 03.05.2025)

A few recent cases in which digital market players were accused of adopting the anti-competitive practices and found guilty of violating provisions of the CA Act, 2002 are elucidated below-

2.5.1 Amazon and Flipkart Anti-trust breach investigation- An allegation for the violation of provisions of the CA Act, 2000 was filed by a trader's association of Delhi against Amazon and Flipkart. Considering the grievous allegations like anti-competitive practices including promoting certain sellers, exclusive product launches, deep discounting, and abuse of dominance under section 3[20] and 4[21] of the Competition Act, 2002 (CA, 2002), the CCI ordered a through probe through their investigating wing Director General (DG). In a report submitted by the CCI in 2024 on those allegations, the mentioned companies were found guilty of violation extant competition law.[22]

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[20] *Sub-section 4 of Section 3, [Any other agreement amongst enterprises or persons including but not restricted to agreement amongst enterprises or persons] at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including -(a)tie-in arrangement;(b)exclusive [dealing] agreement;(c)exclusive distribution agreement;(d)refusal to deal;(e)resale price maintenance, shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India .[Provided that nothing contained in this sub-section shall apply to an agreement entered into between an enterprise and an end consumer.]*

[21] *Section 4- Abuse of dominant position- (1) No enterprise or group shall abuse its dominant position.]*
(2) There shall be an abuse of dominant position 4 [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.
(b) limits or restricts—
(i) production of goods or provision of services or market therefor; or
(ii) technical or scientific development relating to goods or services to the prejudice of consumers; or
(c) indulges in practice or practices resulting in denial of market access 5[in any manner]; or
(d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or
(e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.

[22] Case No. 40/2019: In Re Delhi Vyapar Mahasangh and Flipkart Internet Private Limited and others, Available at: https://www.cci.gov.in/images/antitrustorder/en/4020191652260285.pdf, (Last accessed on 05.06.2025)

2.5.2 Google Case: In the recent past, the CCI received multiple complaints with regards to the anti-competitive practices adopted by Alphabet Inc[23]., the parent company of Google in India. Those cases are also referred to by the CCI in its order. The main grievance put forward by *People Interactive India Private Limited, Mebigo Labs Private Limited, Indian Broadcasting and Digital Foundation and Indian Digital Media Industry Foundation* was against the Google's payment policies for its proprietary app store, Google Play Store.

According to the informants, these policies are in violation of Section 4 of the CA, 2002, as these policies impose unfair and discriminatory obligations on the App developers.

In its order, the CCI referred *Case No 37 of 2022 filed by People Interactive India Private Limited, Case No. 17 of 2023 filed by Mebigo Labs Private Limited, Case No. 27 of 2023 filed by Indian Broadcasting and Digital Foundation and Indian Digital Media Industry Foundation.* After reviewing all relevant documents carefully, the CCI vide an order dated 15 March 2024, is of prime facie view that Google is in violation of Section 4(2)(a), 4(2)(b) and 4(2)(c)[24] of Competition Act, 2002, as Google is accused of differential treatment which needs elaborate investigation and further ordered Director General to cause a detailed investigation.

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[23] People Interactive India Private Limited V. Alphabet Inc, Case

[24] *Section 4- Abuse of dominant position- (1) No enterprise or group shall abuse its dominant position.] (2) There shall be an abuse of dominant position 4 [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.
(b) limits or restricts—
(i) production of goods or provision of services or market therefor; or
(ii) technical or scientific development relating to goods or services to the prejudice of consumers; or
(c) indulges in practice or practices resulting in denial of market access 5[in any manner]; or
(d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or
(e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.

The final order of this case is yet to be published, however, as per the few media reports, the CCI has already concluded that Google is in violation of the provisions of the CA, 2002. This delay in pronouncing the order may be exploited and could cause significant damage to the market.[25]

2.5.3 Meta Case- Another landmark case in which another digital giant was under the lens of the CCI was Meta for the allegation of abuse of dominance related to Privacy Policy. After a detailed investigation, the CCI found that Meta is violating the provisions of the CA Act, 2002 by imposing the amended privacy policy to its users and accordingly on 18th November 2024, the CCI has imposed a penalty of INR213.14 Crore on Meta for the abuse of the dominant position for WhatsApp's controversial amendments to its privacy policy.[26]

2.5.4 Apple Investigation- There is an ongoing investigation on Apple for the allegations raised by ADIF and Match Group with regards to its in-app payment policies and charging of high commission that eventually create a negative impact on the competition. As per the latest report of the CCI, Apple is indulged in the violation of the extant anti-trust provisions of India.[27]

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[25] Bhumika Indulia, *Apple charging a commission of up to 30% on all payments made through its in-app purchase system, is a violation of its dominant position*? CCI orders investigation... Available at: https://www.scconline.com/blog/post/2022/01/03/apple-charging-a-commission-of-up-to-30-on-all-payments-made-through-its-in-app-purchase-system/, (Last accessed on 04.05.2025)

[26] CCI imposes a monetary penalty of Rs. 213.14 crore on Meta for anti-competitive practices in relation to 2021 Privacy Policy Update, posted on November 18, 2024, PIB Delhi, Available at: https://www.pib.gov.in/PressReleasePage.aspx?PRID=2074431#:~:text=The%20Competition%20Commission%20of%20India,shared%20with%20other%20Meta%20companies. (Last accessed on 04.05.2025)

[27] Aditya Karla, "Apple blocks Tinder owner, startups from commercial secrets in India antitrust case, Reuters, March 12, 2025, Available at: https://www.reuters.com/technology/apple-blocks-tinder-owner-startups-commercial-secrets-india-antitrust-case-2025-03-12/#:~:text=NEW%20DELHI%2C%20March%2012%20(Reuters,firm%2C%20a%20confidential%20order%20shows., (Last accessed on 04.05.2025)

2.5.5 Food Aggregators Case (National Restaurant Association of India Case)[16]

Another significant case that raised important questions for the legislators about the need for a distinct law for the digital sector involves recent allegations of abuse of market dominance by homegrown digital market players such as Zomato and Swiggy.[28] In the past few years, both Zomato and Swiggy have built a large customer base and emerged as prominent players of the digital sector. Proportionate with their growth, complaints regarding their alleged abuse of market dominance and adoption of unfair and discriminatory practices have also increased considerably in the post Covid-19 era.

In its order dated April 4, 2022, the CCI formed a prime facie view that Zomato and Swiggy were in contravention of Section 3(1) of the CA, 2002 and further directed the Director General to cause a detailed investigation.

In furtherance of this, the DG has submitted a confidential report in March 2024, and concluded that by entering into the exclusivity agreement, Zomato and Swiggy are engaged in the "preferential treatment" and are in violation of the provisions of the CA, 2002.[29]

The final order came almost two years after the prime facie opinion of the CCI, and this prolonged delay remains the major concern of the legislators,

The above-mentioned cases show an aggressive approach adopted by the regulators in regulating the anti-competitive practices adopted by the companies. With the advancement

[28] Case No. 16 of 2022, Competition Commission of India, Available at: https://www.cci.gov.in/antitrust/orders/details/6/0, (Last accessed on: 07.05.2025)

[29] Aditya Karla and Arpan Chaturvedi, Exclusive: India finds Zomato, Swiggy food delivery businesses breached antitrust laws, documents show, Available at: https://www.reuters.com/world/india/indias-probe-finds-zomato-swiggy-breached-antitrust-laws-documents-show-2024-11-08/, (Last accessed on: 07.05.2025)

of technology, the challenges posed on fair competition are the key issues which the regulators are currently facing.

Chapter III
Extant Regulatory Landscape of India

3.1 Decoding the Current Framework

Post liberalization in 1991, a new dawn was witnessed by the Indian market. By opening the Indian market to the globe, the then Indian government paved the way for the entry of the new market players. Consequently, the number of market players increased significantly. However, soon it was felt that the extant regulatory framework of India was not commensurate to tackle the complexities arising from the introduction of new entrants. Accordingly, the need for revamping of the extant regulatory framework was felt by the legislators. Moreover, with the change in the market dynamics, it was also required to formulate the regulatory framework that matched international standards, and this onus was heightened as India had ratified numerous international treaties. Accordingly, law committees were constituted to identify the gaps and formulate required legislation.

On the direction of the government, a committee was constituted to examine the provisions of the MRTP Act, 1969 and to propose a competition law to cater to the modern issues that have cropped up due to the change in the market position; the committee was famously known as the Raghavan Committee. On the recommendation of the Raghavan Committee and to keep parity with the global trends, the CA, 2002 was introduced.

In this chapter, we will discuss in detail the existing laws with regard to digital marketplace to understand their efficacy and identify the areas of gap that need to be filled to implement a robust legal framework. This entire chapter is based on the recent report submitted by the Committee on the Digital Competition Law (CDCL).

3.2 Extant Regulatory Landscape

The extant regulatory landscape for the digital marketplace is fragmented and scattered across multiple ministries, which are detailed below.

3.2.1 The Competition Act, 2002 and subsequent amendments

The CA, 2002 was promulgated on the recommendation of the Raghavan Committee. The *Raghavan Committee was appointed by the government of India* to review the extant legal framework for competition. In the preface of the said report it was mentioned that:

> "*Competition is a complex and a highly technical subject which does not lend itself to easy summary or concise clarification. Of late, with globalization and the opening of the markets worldwide, it has become a subject of great practical importance. It involves the establishment and development of concepts, legal principles and policies for the benefit of consumer interest."*[30]

The above-mentioned statement still holds true, and with technological advancement and the evolution of the industry, it has become more complex; and that's why it requires rapid modernization. During the first decade of the twentieth century, the CA, 2002 has been amended to meet the present demands. However, with rapid economic growth from 2010 onwards and to combat the emerging challenges, the requirement of a modernized competition law regime was felt. Thus "Competition Law Review Committee (CLRC)" was constituted by the MCA in 2019. In their report, CLRC addressed numerous significant issues considering contemporary matters. Considering the growing needs of the market and by understanding the shift of tendency from the traditional to the digital market, the said CLRC report had a separate chapter on the technology, by the name of "Technology and New Age Markets". In the background of the said Chapter, Committee acknowledged that

> "*A critical area in any deliberation on the digital economy is its interface with Competition Law. Recognizing this, the Committee agreed that this is an opportune*

[30] Report of the High Level Committee on Competition Policy and Law, Available at: https://www.ies.gov.in/pdfs/Report-Competition-CLRC.pdf, Last accessed on: 08.05.2025

moment to access if the Competition Act is ready to address the pressing issues of the ever-growing digital markets."[31]

Considering the above, CLRC had recommended a few amendments to the extant law and consequently the CA Act, 2002, was amended in the year 2023 to give effect to the certain recommendations proposed by the CLRC.

3.2.2 Sector-specific Regulations

i. The Consumer Protection Act, 2019

The Consumer Protection Act, 2019 (CPA, 2019)[32] is an important legislation as it protects the rights of the consumers and fosters fair practices in the market. The CPA, 2019 was originally enacted in 1986, however it was amended in 2019 to cater the need of the evolving digital marketplace. With the technological advancement and rise of the online transactions, the extant consumer protection act was insufficient to meet the complexities of the digital market.

ii. The Consumer Protection (E-commerce) Rules, 2020

A notable development occurred in the CPA Act, 2019 when dedicated rules were notified for the e-commerce sector. The Consumer Protection (E-commerce) Rules, 2020 **(**E-commerce Rules) was notified by the Ministry of Consumer Affairs, Food and Public Distribution in the year 2020. The rationale behind notifying a dedicated law for the e-commerce sector was to address the emerging complexities of the sector. The e-commerce sector posed considerable challenges to the legislators. Additionally, to keep parity with

[31] Report of Competition Law Review Committee, July 2019, Available at: https://www.ies.gov.in/pdfs/Report-Competition-CLRC.pdf, Last accessed on: 08.05.2025

[32] Report of the Committee on Digital Competition Law, 27th February, 2024, Available at: https://prsindia.org/files/parliamentry-announcement/2024-04-15/CDCL-Report-20240312.pdf, Last accessed on: 08.05.2025

international standards like UNCITRAL, dedicated rules regarding e-commerce were formulated.

This rule covers both goods and services dealt over digital or electronic network; it encompasses all forms of digital marketplace. The intent of the legislators in promulgating the E-commerce rules is to protect the consumers from the unfair trade practices on such platforms. In the past few years, complaints with regard to the e-commerce sector have increased at an exponential rate.

3.2.3 Information Technology Act, 2000

The electronic commerce received first legal recognition in India with the enactment of the IT Act, 2000. The driving factor for the enactment of the IT Act 2000 was the adoption of model law on e-commerce by the UN. The IT Act, 2000 paved the way for the e-contracts in India. Apart from providing legal recognition for e-commerce, the IT Act 2000 embodies different nitty-gritty aspects of e-commerce. The IT Act, 2000 contains provisions with regards to the e-contract, cybercrimes and certain other important aspects of the digital marketplace.

To strengthen the provisions regarding evolving technology, certain provisions of the IT Act, 2000 were further amended in the year 2008. The IT Act, 2000 together with the amendments, played a pivotal role in shaping the e-commerce market in India.

3.2.4 Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 and Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

The Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 (SPDI Rules, 2011) is the first law to protect sensitive personal data in India. Data is considered the cornerstone of the digital

marketplace; if not treated with caution, it may have an adverse effect on the market and significantly impact on the growth of the market.

Considering the growing need to protect personal data, the SPDI rules were enacted in 2011. In a nutshell, the SPDI Rules are framed to protect sensitive personal data.

Majorly social media and news media are falling under the purview of the The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Intermediary Rules). From the perspective of applicability and scope, the objective of the Intermediary Rules is to regulate the intermediaries and to enforce all reasonable steps to secure their computer resources.

Although these two rules have created a considerable impact in protecting the rights of the consumers and have had a positive impact on business, they protect only a corner of the digital marketplace, not the whole market altogether.

3.2.5 The Digital Personal Data Protection Act, 2023 (DPDP)

The DPDP Act is a path-breaking milestone in the government's initiative to match global trends. After detailed deliberations and multiple rounds of discussions, finally the DPDP Act was enacted in 2023. Despite multiple pushbacks from the industry leaders, it took a while for the government to enact the law. Presently, the DPDP rules which complement the DPDP Act are under discussion. The DPDP Act is India's effort to introduce a law similar to the GDPR. The GDPR is regarded as the model law for data protection and numerous jurisdictions are trying to implement laws similar to the GDPR to protect personal data. The cornerstone of the digital marketplace is data, and that data contains personal information; the leakage of consumers' personal data is a critical area of concern for regulators in different jurisdictions. Accordingly, a conscious effort to bring a commensurate law to protect the consumers' personal data can be observed.

Whereas the DPDP can change the compliance landscape of the nation, on the contrary, it may not be able to address the underlying issues created by the large players in the digital marketplace.

3.2.6 E-commerce-Principles and Guidelines for Self-governance

In January 2025, the BIS circulated draft E-commerce-Principles and Guidelines for Self-governance Rules for public comments. Although this can be regarded as a welcome step towards regulatory framework with regard to the e-commerce sector, it will not be able to per-se tackle the issues posed by the digital marketplace. The pertinent question raised regarding the implementation of the BIS Guidelines is that there are specific rules to cover most of the provisions governed by the BIS guidelines, why do we need a specific rule for the e-commerce sector?

3.2.7 Summary of the extant regulatory landscape of the Digital Marketplace

Although the laws implemented by post-liberalization are comparatively latest, with the evolution of technology, a need for certain robust laws has been felt for better regulation. With the paradigm shift in the market trends from traditional market to the online market, a supplemental law alongside the extant law has been observed. In the past few years, a lot of amendments have been implemented; however, the rapid changes in the market behaviours pushed the legislators towards a new law. While a few amendments have already been implemented to combat the challenges posed by present market dynamics.

After reviewing the extant regulatory landscape with regard to the e-commerce sector of India, it can be concluded that although a number of issues arising from the complexities of the digital market can be addressed within the extant landscape for digital market players, the existing laws protect only a few corners of the digital market place, and are not sufficient to address the exclusive challenges posed by the digital players.

While we have the IT Act, 2000 and DPDP Act to protect the personal data of the consumers, we do not have a commensurate law to protect the consumers when digital

market players use their personal data to manipulate consumer's preferences for the benefit of the digital players themselves.

The CPA, 2019 and the Ecommerce Rules can protect consumers from misleading advertisements, however, those regulations cannot protect consumers from the anti-competitive practices adopted by the large digital market players.

The CA, 2002 covers many provisions similar to those proposed in the proposed DCB. At this juncture, a comparative analysis of the present provisions mentioned in the CA, 2002 vis-à-vis the proposed DCB to be carried out to understand its effectiveness and eliminate duplicity that may create ambiguity and an environment of uncertainty.

3.3 Recent Challenges faced in the Digital Market Sector

The entire discussion on the need for a dedicated law with regard to the digital marketplace has stemmed from the recent orders passed by the *Competition Commission of India (CCI)* concerning the anti-competitive practices adopted by digital market players. The orders passed by the CCI have mostly emanated from complaints filed by aggrieved parties; however a few have also originated from the suo moto action of the CCI. The suo moto power of the CCI is enshrined in the section 33 of the CA, 2002. In this part, a few recent orders of CCI are analyzed thoroughly to identify the key concerns that are hindering the growth of the digital market.

3.3.1 Google Case- The present case was initiated with confidential information filed against Google India, its parent company Alphabet Inc. and a few more group companies, regarding the abuse of the dominant position which is violative of the Section 4 of the CA, 2002.[33] On the basis of the material available on record, the CCI formed a prime facie view that the alleged parties i.e, the Google group were in contravention of section 4 of the CA,

[33] In Re. XYZ V. Alphabet Inc., Google LLC, Google Ireland Limited, Google India Private Limited and Google India Digital Services Private Limited, Available at: https://www.cci.gov.in/images/antitrustorder/en/order1666696935.pdf, (Last accessed on: 10.05.2025)

2002, hence ordered the DG to conduct a detailed investigation under section 26(1) of the CA, 2002.

Subsequently, two significantly similar allegations were received by the CCI against the Google group, bearing case number 14 of 2021 and 35 of 2021. Accordingly, those cases were also clubbed with case number 17 of 2020 and the Director General (DG) was instructed to conduct a consolidated investigation, considering the similarities between the allegations made in all three cases. Thereafter, the DG submitted a consolidated investigation report on 16th March, 2022 on their findings with regards to the allegations made against the Google group. In their detailed analysis, the DG concluded that Google is following discriminatory practices and that they are in violation of the provisions of Section 4(2)(a)(i) of the CA, 2002. Further, the service fees charged by the Google group were found to be unfair and discriminatory.[34]

In this extant case, the DG assessed the relevant market and dominance of Google group to ascertain whether they were abusing their dominant position. The CCI referred to the order passed *by the Hon'ble Supreme Court of India in Civil Appeal No. 6691 of 2014 in the case of Artists and Technicians of WB. Film and Television*.[35] In this case, it was observed that the market definition is a tool to identify and define the boundaries of competition between firms.

[34] In Re. XYZ V. Alphabet Inc., Google LLC, Google Ireland Limited, Google India Private Limited and Google India Digital Services Private Limited, Available at: https://www.cci.gov.in/images/antitrustorder/en/order1666696935.pdf, (Last accessed on: 10.05.2025)

[35] Competition Commission of India V. Co-ordination Committee of Artists and Technicians of WB. Film and Television and Ors, Available at: https://indiankanoon.org/doc/118036852/, (Last accessed on: 10.05.2025)

After considering different evidence and also the mitigation factors put forth by the Google group, *the CCI imposed a penalty at the rate of 7% of the average of relevant turnover, which amounted to 936.44 crore for violation of Section 4 of the CA, 2002*.[36]

This order passed by the CCI unveiled a new era and posed several significant questions before the legislature regarding the abuse of the dominant position by the dominant market players and related anti-competitive practices. This order indicates the approach of the competition watchdog towards maintaining pro-competitive market behaviour, promoting market fairness and fostering consumer benefits. By virtue of this order, the market dominators need to reexamine the practices adopted by them. Additionally, this order raised a handful of questions before the legislators regarding the need for specific legislation to regulate the evolving digital marketplace.

3.3.2 Apple Case- This case was initiated based on the information shared by the "*Together We Fight Society*", a non-governmental organization.[37] Similar to the Google group case, in this case also it was alleged by the informant that the Apple group is in violation of Section 4 of the CA, 2002. The initial complaint was filed against the Indian subsidiary of the Apple group, i.e. against AIPL. However, it was averted by the Apple group that AIPL is not the relevant entity considering that ADI is responsible for making available Apple-owned apps, content and services to the customers. It was averted by the informant that Apple imposes unreasonable and unlawful restraints on app developers which creates hinderance to offer their products to the consumers. Moreover, it charges hefty fees to list third-party developer's products on the "App Store" which is controlled by Apple. It was also alleged by the informant that Apple enjoys a dominant position in the market for the "non-licensable mobile OS for smart mobile devices".

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[36] K R Srivats, CCI launches probe into Google over alleged anti-competitive practices in real money gaming, The Hindu, November 28, 2024, Available at: https://www.thehindubusinessline.com/news/cci-launches-probe-into-google-over-alleged-anti-competitive-practices-in-real-money-gaming/article68922825.ece, (Last accessed on 11.05.2025)

[37] In Re. Together We Fight Society v. Apple Inc. & Another, Case No. 24/2021, 2021 SCC OnLine CCI 62 (31 Dec. 2021), Available at : https://www.cci.gov.in/antitrust/orders/details/32/0 , (Last accessed on 11.05.2025)

It was also highlighted by the informant that similar litigations are already under investigation against the Apple group in different parts of the globe. Although, the Apple group had requested an opportunity for a preliminary conference before the final order was passed by the CCI, based on the information available on record, the CCI is convinced that a prime facie case exist against the Apple group; hence, it instructed the DG to initiate a detailed investigations into the allegations made by the informant and submit their submission their findings to the CCI. In this regard, the CCI relied on the decision made by the Hon'ble Supreme Court of India in the case of Competition Commission of India Vs. Steel Authority of India Ltd. in the civil appeal number 7779 of 2010, where it was concluded that " ….

> *Neither any statutory duty is cast on the Commission to issue notice or grant hearing, nor can any party claim, as a matter of right, notice and/or hearing at the stage of formation of opinion by the Commission, in terms of Section 26(1) of the Act that a prime facie case exists for issuance of a direction to the Director General to cause an investigation to be made into the matter."*[38]

Although, the final decision with respect to the allegations made by the informant is not yet decided by the CCI, however, in its preliminary report submitted by the CCI in July, 2024, they have accused Apple group for abusing the dominant position, while the amount of potential fine is yet to be decided, perhaps CCI will instruct the Apple group to allow third party payment systems on the Apple app store.

This case yet again strengthens the position of the market regulator with regards to the dominant position enjoyed by the prominent players of the digital market in India. It clearly indicates the inclination of the Indian regulators towards coping with the global standards as followed by the different matured markets around the globe.

[38] AIR 2017 SC 1449; (2017) 5 SCC 17, Available at: https://indiankanoon.org/doc/118036852/, (Last accessed on: 06.06.2025)

3.3.3 Amazon Case: This particular case is significantly different from the above-mentioned two cases, as the CCI has taken suo moto cognizance of this case on the basis of a report published by Reuters, rather than information received from any informant. In their order dated 11th March, 2022, it was mentioned that this case had emanated from the special report published by Reuters on 13th October, 2021[39]. On the basis of the report published by Reuters, Amazon Seller Services Private Limited (ASSPL) was asked to file certain information/documents to unearth the allegations mentioned by Reuters in the report with regard to the unfair practices adopted by the Amazon group.

In their submission, ASSPL categorically denied the facts mentioned in the Reuters report and addressed all the allegations with their explanation. The key element highlighted by ASSPL in their submission was the delineation of Amazon's Indian business structure from its global practices. Amazon's Indian business model is significantly different from the business model followed by them in the US and European region. In the US and European Union regions, Amazon operates in hybrid mode i.e. both in online and offline mode, while they operate only in online mode in India.

In India, ASSPL, which is a wholly owned subsidiary of Amazon.com Inc., operates the online portal, i.e. amazon.in. conducting its business purely online, unlike the hybrid model they follow in other jurisdictions. Furthermore, they also affirmed that none of the Amazon group companies is engaged in the business of manufacturing of Amazon branded products in India. An indirect wholly owned subsidiary of Amazon.com Inc. procures products from wholesalers or manufacturers and sells them in the online marketplace of the ASSPL. Moreover, the ASSPL also denied the allegation of preferential treatment towards their own brands over the third-party brands, which is regarded as the main complaint and is already under consideration in different jurisdictions. According to the averments made by the ASSPL, as the revenue or growth of their business is dependent on

[39] In Re: Allegations pertaining to private label brands related to Amazon sold on Amazon India Marketplace, Available at: https://www.cci.gov.in/images/antitrustorder/en/suo-motu-case-no-0420211652510352.pdf, (Last accessed on: 06.06.2025)

the array of products available in their online marketplace, preferential treatment would hinder their growth opportunities, which would eventually impact their revenue in India. Considering the submission of the ASSPL, the CCI concluded to not to proceed with the inquiry against the ASSPL. However, it was also clarified by the CCI that in case of any doubt in future regarding non-compliance of the provisions of the CA, 2002, the CCI may proceed with a fresh inquiry without considering the present order passed by CCI.

The above-mentioned case laws depict the present issues with which the competition market is grappling. The key element to maintaining competitiveness in the market is to ensure that entities operate within the contours created by the provisions of the CA, 2002, and it is the ostensible responsibility of the CCI to oversee whether the entities comply with these provisions. As the digital marketplace is significantly different from the traditional market, it is immensely important to ensure that the extant law is commensurate with the complexities of the digital marketplace. The foremost issue pertaining to the digital marketplace is its fast-evolving nature; until this issue is addressed and corrective measures are taken, a considerable amount of damage will impair the market.

Considering the fast-evolving nature of the digital marketplace, a few jurisdictions are inclining towards the ex-ante regime, while the same fast evolving nature is being used as an excuse by advocates of the ex-post regime. Advocates of the ex-post regime claim that the comparatively rigid nature of the ex-ante regime will not suffice the needs of the digital marketplace. Moreover, as the ex-ante regime is still at the nascent stage with regard to the digital marketplace, sufficient data are not yet available to support it. The DMA of the EU was rolled out only two years ago, and although it has already started providing important decisions, it would be too early to comment on its success in regulating the digital marketplace. Additionally, the main criticism against Indian judicial system is its prolonged justice delivery, which is significantly different from that of other developed nations.

Accordingly, at this juncture, it must be assessed with utmost caution whether the proposed ex-ante regime could bring the desired success in regulating the digital marketplace in India.

Chapter IV

Ex-ante Regime

4.1 "Ex-ante" - Decoding the concept

Regulation- an integral part of modern society and the steering force behind the effective functioning of the market-adjusts or revamps according to the growing needs of society. A regulation can be proactive or reactive in nature, based on the time of its application. There is a continuous debate about when the market should be regulated; before an event occurs or after a market failure. This entire debate is the underlying factor in the present debacle of the competition market. Broadly, based on the time of its application regulation can be divided in two parts: either "ex-ante" or "ex-post". While ex-ante refers to proactive actions, ex-post refers to the reactive actions. In this chapter, let's delve into the details to understand the ex-ante approach, how it differs from the ex-post approach and critically analyze the pros and cons of this approach.

"Ex-ante" is a term originated from Latin, and the English translation of it means "beforehand" or "before the event".[40] In Latin "Ex" means "out of" or "from" and "ante" means "before". This terminology is vastly used in economics, finance and decision-making analysis. The ex-ante regime can be termed as a precautionary or forward-looking regime, where the regulatory regime is predicted beforehand, before the occurrence of an event. The cornerstone of the ex-ante regime is the shift towards prevention over punishment. With rapid technological advancements, it is challenging for regulators to keep track on the digital economy, accordingly an ex-ante regime or a proactive regulation can make a significant difference. With the ex-ante regime, a structured regulation or set of compliances can be imposed on the entities, that will assist regulators to track the compliances proactively.

[40] Business at OECD (BIAC), Regulatory Approaches in Times of Technological Change: General Principles and Specific Policy Suggestions 2 (July 2020), Available at https://25159535.fs1.hubspotusercontent-eu1.net/hubfs/25159535/website/documents/pdf/Digital%20Economy/Business%20at%20OECD%20Policy%20Brief%20Covid-19%20and%20Digital%20Technology.pdf, (Last accessed on: 12.05.2025)

It is largely different from the ex-post regime where action is taken after the occurrence of a harmful event. It is a typically reactive approach where actions are taken after the occurrence of a non-compliance or a harmful event. The recent trend of shifting from the ex-post to the ex-ante regulatory framework in the competition domain has stemmed from the recent market trend and centralization of power. The ex-post regime gets activated once there is an incident of market failure. While the ex-ante regime is a pre-determined set of rules that directs businesses.

4.2 Ex-ante regime and Competition

At present, the competition jurisprudence is debating the effective system of regulation and the entire debate is evolving around the ex-ante and the ex-post regime. The assessment of the effectiveness of the "ex-ante" regime is back in discussion with regards to the recent changes promulgated by the EU in the competition regime. Of late, by introducing the Digital Markets Act, 2024 (DMA) the European Union (EU) initiated a global debate on the effectiveness of the "ex-ante" regime and it has garnered global attention as multiple nations started using the DMA as a starting point for drafting their own act or regulation.

In their 71st Working Party 2 meeting on 7th June 2021 the Business at OECD (BIAC), presented a note named "Competition Enforcement and Regulatory Alternatives" to analyze effectiveness of the ex-ante on the subject of competition law, specifically into the digital sector.[41] BIAC articulated their view in the following manner in its *2020 General Principles and Policy suggestions to Regulatory Approaches in Times of Technological Change-*

> *"Governments and civil society rely on companies to build and operate complex digital infrastructure. Governments play a critical role in regulating the delivery of digital services and protecting the interest of consumers. Regulators should adopt a principles-based, technology neutral approach, benefitting both industry and*

[41] Badri Narayanan and Hosuk Lee-Makiyama "Economic Costs of Ex-ante Regulations", October, 2020, Available at: https://ecipe.org/publications/ex-ante/, (Last accessed on: 12.05.2025)

consumers. The goal should be to design regulatory approaches that allows for technological innovation and prevents technologies from becoming stuck in inapt regulatory processes and from being subject to regulatory based competitive disadvantage."[28]

In their Occasional Paper No. 7/2020 named "Economic Costs of Ex-ante Regulations" the ECIPE[42] has criticized the effect of the ex-ante regime on the digital sector by stating that

"*Needless to say, ex-ante approaches are poorly fitted for sectors that are rapidly evolving or to regulate low-risk general-purpose technologies. A poorly designed and executed ex-ante regulation is proven to stifle the innovation outputs in an economy, reducing its ability to catch up with its global competitors.*" [43]

Recently, multiple nations are assessing the effectiveness of the ex-ante regulation for regulating the digital marketplace with regard to competition. While regulators prefer the ex-ante regime over the ex-post regime because of its effectiveness, there are significant concerns raised over the effectiveness of the ex-ante regime because it is considered stifling to innovation. There are numerous literatures with regards to the effectiveness of the "ex-ante" regime and its relevance to competition jurisprudence. The cornerstones of the competition jurisprudence are promoting fairness, transparency and contestability. While "ex-ante" regulation is regarded as of utmost important as it acts as a catalyst in promoting transparency, a major drawback of this cannot be disregarded i.e. the adverse effect of "ex-ante" on innovation and the entrance of new players in the market. Chapter IV of the CDCL Report has discussed in detail the rationale behind proposing the ex-ante regime.

[42] European Centre for International Political Economy

[43] Occasional Paper No. 7/2020 named "Economic Costs of Ex-ante Regulations" https://ecipe.org/publications/ex-ante/ (Last Accessed on 03.06.2025)

4.3 Challenges in ex-ante regime

The antagonists of the "ex-ante' regime put forward a few key traits of the "ex-ante" regime which, according to them, create an adverse effect on the industry. Let us dive into those traits to understand the negative impact that the ex-ante regime may have on the evolving digital marketplace.

4.3.1 Stifling Competition: The major criticism of the ex-ante regulatory regime is that it stifles competition rather than promoting it. This view is also taken by the chair of the OECD Competition Committee, Frederick Jenny[44]. The requirement of complying with the stringent compliance requirements would definitely stifle innovation, according to numerous antagonists of the ex-ante regulatory regime. Competition is vastly promoted with the entry of new players in the domain. However, with the increase of compliance burden, the new players would be demotivated to enter the market, accordingly the competition will suffer with the presence of the limited number of players.

4.3.2 Not fit for dynamic market: In the ex-ante regime, the regulator will rely on preconceived notions, and a set of rules will be established that entities are expected to follow. Considering the dynamic and evolving nature of the digital marketplace, this approach can be regarded as inappropriate, as the regulations can become obsolete with innovation and change in dynamics. The digital marketplace is evolving rapidly; hence, the ex-ante approach with its slow-changing traits would not be able to address the new challenges. Furthermore, in general, any change in legislation requires a chain of approvals, which makes it difficult to amend any existing law. Therefore, the issue concerning the antagonists of the ex-ante regime is whether the slow-changing nature of the ex-ante regime is appropriate or not.

[44] Frederic Jenny, Unified Competition Rules can reduce friction but world is not ready for global digital framework: ET Bureau, March 11, 2023, https://government.economictimes.indiatimes.com/news/governance/unified-competition-rules-can-reduce-friction-but-world-is-not-ready-for-global-digital-framework-frederic-jenny/98556061 (Last Accessed on 04.06.2025)

4.3.3 Entry-barrier: Another important factor regarding the ex-ante regime is that while it is convenient for large entities to comply with the cumbersome legal provisions specified under the ex-ante regime, it creates a considerable burden on new players, which will eventually discourage new entrants from entering the market.

4.3.4 Expensive: In extension to the above-mentioned point, another critical point with regard to the ex-ante approach is that the imposition of regulations based on forecasting the problems would eventually increase the compliance cost significantly. This incremental cost of compliance would negatively impact the entry of new players into the market.

4.3.5 Lack of data: As the digital market is still evolving, it is difficult to draft a full-fledged regulation with inadequately developed data. As the digital marketplace grows, new challenges will arise, it will unveil further issues and new areas of concern, making it more convenient to formulate a dedicated law for the digital marketplace or to adopt whether an ex-ante regime or an ex-post regime, with certain modifications, should be adopted for better efficiency.

4.3.6 Chances of false positive or false negative: The final and last point that the antagonists of the ex-ante regime are stating is that the ex-ante regime raises the chances of false positives or false negatives because of the evolving nature of the digital marketplace. At this juncture, when the digital marketplace is taking its shape in the Indian market, the adoption of the ex-ante regime can hinder the growth of the market.

4.4 Global application of ex-ante regime

Lately the ex-ante approach has taken the front-seat in the competition jurisprudence and multiple nations have already implemented or in the process of implementing the same. The shift in mindset from the ex-post regime to the ex-ante regime has multiple factors, the major factors being the global trend of abuse of dominant position and adoption of the anti-competitive measures by the large digital market players. In this chapter, we will discuss

the ex-ante regulations that are implemented or proposed to be implemented in numerous jurisdictions around the world to understand the global stand.

4.4.1 European Union- Digital Markets Act, 2024: The Digital Markets Act, 2024 (DMA) is regarded as one of the most important pieces of legislation in competition jurisprudence; DMA is part of EU's "Europe fit for the digital age" [45]strategy. As the most influential commonwealth of the world, EU's DMA has a significant effect in framing similar laws in other jurisdictions as well. The rationale behind enacting this regulation is to promote fairness and contestability. It has become effective since March 2024 and is already in process of shaping the competition regime of the European region.

Identification and regulation of the "*gatekeeper*"[46] is the cornerstone of the DMA. Gatekeepers are regarded as the large online platforms with substantial market power and significant influence over digital services. As per the typical traits of the ex-ante regulation, this act has stipulated certain compliances, and the gatekeepers are supposed to comply with the stringent regulations specified by the DMA.

Post its promulgation, regulatory authorities under the DMA have initiated investigations against a few digital marketplace giants like Google, Apple and Meta.[47]

4.4.2 United States of America: Being one of the top three players in the digital marketplace, the United States of America (USA) is always in forefront in bringing laws commensurate to the extant market dynamics. In the late nineteenth century, the USA

[45] A Europe fit for the digital age, Available at: https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age_en, (Last accessed on: 05.06.2025)
[46] Article 3, Designation of gatekeepers

1. An undertaking shall be designated as a gatekeeper if:

(a) it has a significant impact on the internal market; (b) it provides a core platform service which is an important gateway for business users to reach end users; and (c) it enjoys an entrenched and durable position, in its operations, or it is foreseeable that it will enjoy such a position in the near future.

[47] C/2025/3235, European Commission, Case DMA.100185 – Apple – Operating systems – iOS – Art. 6(3), Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C_202503235
(Last Accessed on 05.06.2025)

promulgated the first legislation in competition law jurisprudence, namely the Sherman Act, 1891. Consequently, the Clayton Act, 1914 was also introduced to complement the Sherman Act. The Clayton Act, 1914 the Sherman Act, 1891 and the Federal Trade Commission (FTC) are the key players in shaping competition jurisprudence in the USA.

With rapid technological advancement in the twentieth century, a handful of market players started dominating the digital marketplace, and accordingly, a series of investigations were initiated by the FTC and Department of Justice (DOJ)[48]. A few giants like Meta and Google were accused of anti-competitive practices. At this juncture, the requirement of a robust regulatory framework was felt by the legislators of the USA, and accordingly, several new laws were proposed.

While the proposed new laws are not purely ex-ante in nature like the DMA, they contain certain provisions which can be regarded as the pre-emptive measure or similar to the ex-ante regime.

The most important piece of proposed legislations is American Innovation and Choice Online Act (AICO)[49], that prohibits large digital enterprises or "covered platforms" to conduct certain discriminatory acts. To prohibit discriminatory acts carried out by the covered platforms with regards to the payment system, the Open App Markets Act (OAMA Act)[50] is proposed by the US legislatures. The main reason behind proposing this legislation is to prohibit large enterprises from dealing arbitrary with other payment apps.

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[48] *Jonathan Vanian, CNBC, Meta faces the FTC as blockbuster antitrust trial kicks off, Available at:* https://www.cnbc.com/2025/04/11/ftc-meta-instagram-whatsapp-lawsuit.html (Last Accessed on 05.06.2025)

[49] *Jeffrey J. Amato and Dana Cook-Milligan, American Innovation and Choice Online Act, Available at:* https://www.winston.com/en/blogs-and-podcasts/competition-corner/american-innovation-and-choice-online-act (Last Accessed on 05.06.2025)

[50] Digital Markets Regulation Handbook, USA, *Available at:* https://www.clearygottlieb.com/-/media/files/rostrum/dmrh/dmrh-usa_r1?utm_campaign=DMRH_April&utm_medium=pdf&utm_source=download&utm_content=usa (Last Accessed on 05.06.2025)

4.4.3 China: As per the latest market share, China holds the first position in the digital marketplace and with the passage of time and technological developments, legislators in China also felt the need of robust framework.

Until 2020, China's approach towards digital marketplace was tolerant and prudent, however realizing the global trends and growing complexity in the market, China strengthened their regulatory regime by introducing the State Administration for Market Regulation (SAMR)[51]. China is the home for several digital market giants like Alibaba, ByteDance, Tencent etc., and without a robust legal framework these entities were enjoying the dominant position. Until 2024, SAMR had handled 107 cases regarding abuse of dominant position, blocked mergers and non-notified mergers.[52] Alibaba, the major player of the digital marketplace, was fined for their anti-competitive practices for several years.[53]

Although the initial regulations of China was ex-post in approach, considering the global trend, China is also shifting towards the ex-ante regime. SAMR had published two guidelines, namely "Draft Classification Guidelines" and "Draft Regulations Guidelines", to prevent the anti-competitive practices through ex-ante regulation. [54]

Recently in March 2025, SAMR, to strengthen the regulatory system in the platform economy and promote the standardized development of platform economy, proposed a few reformatory regulations, such as laws for supervising and managing online trading

[51] State Administration for Market Regulation, March, 2025, Available at: https://www.samr.gov.cn/xw/zj/art/2025/art_f4c6c21f93eb4e418bd5333ddd847a5b.html (Last Accessed on 06.06. 2025)

[52] By Liyang Hou, Competition Regulation of Digital Platforms in China, Available at: https://www.promarket.org/2025/04/01/competition-regulation-of-digital-platforms-in-china/ (Last Accessed on 06.06. 2025)

[53] Competition Regulation of Digital Platforms in China, By Liyang Hou Available at: https://www.promarket.org/2025/04/01/competition-regulation-of-digital-platforms-in-china/ (Last Accessed on 06.06. 2025)

[54] Digital Policy Alert, Available at: https://digitalpolicyalert.org/event/30798-draft-regulations-on-supervision-and-administration-of-online-trading-platform-rules-including-data-protection-requirement-consultation-opened-by-samr (Last Accessed on 06.06. 2025)

platforms, supervising and managing live streaming e-commerce, and a dedicated law regarding the management of quality and safety of key industrial products sold online.[55]

4.4.4 Germany: As a prominent player of digital marketplace, German legislation with regards to the digital marketplace has evolved from ex-post to ex-ante by a series of amendments. The German Act against Restraints of Competition (ARC), who was initially following the ex-post approach, has slowly transitioned towards the ex-ante approach to meet the growing needs of the present market dynamics.

The 10th amendment to the ARC, which came into force in 2021, was based on the recommendation of the Competition Law 4.0" Commission. Under this amendment, an ex-ante regulatory framework was introduced under section 19a focusing on large digital entities.[56]

The 10th amendment introduced the concept of "undertakings of paramount significance for competition across markets" (PSCAM). With the introducing of the ex-ante regime, the PSCAM are obligated to comply with certain pre-determined regulations. The 10th amendment strengthens the position of regulation with regards to the digital marketplace by introducing concept of "rebuttable presumption" unless otherwise proven by the PSCAM in question.

4.4.5 Japan- Like other countries, Japan also intending to revamp their competition regulatory framework by supplementing the old competition law with a few new legislations designed for the digital marketplace, i.e. Transparency and Fairness of Digital

[55] Digital Policy Alert, Available at: https://digitalpolicyalert.org/event/28368-state-administration-for-market-regulation-announced-supervision-and-management-measures-for-online-trading-platforms (Last Accessed on 06.06.2025)

[56] *Oliver Budzinski, Sophia Gaenssle & Annika Stohr, The draft for the 10th Amendment of German Competition Law: Towards a new concept of " Outstanding Relevance Across Markets"?* Available at: *https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2021/19_01_2021_GWB%20Novelle.html* (Last Accessed on 07.06. 2025)

Platforms Act (TFDP Act)[57] and Specified Digital Platform Providers (SDP guidelines)[58]. The TFDP Act is applicable from 2021, this Act was enacted, to meet the global trend and regulate the digital economy. The SDP guidelines are the extension of the TFDP Act, and it expands the regulations prescribed under the TFDP Act.

Additionally, Japan has implemented a new ex-ante regulation, which is similar to the DMA, to regulate specified smartphone software. Although the scope of the new law is limited in nature, it can be regarded as a welcome step, considering the present market dynamics.[59]

The above-mentioned global trend clearly establishes the shift of the market from ex-post to ex-ante. Where few nations are introducing a new piece of legislation, few are amending their existing laws to meet the global trend. The DMA is regarded as the pioneer of this global trend and acting as the benchmark for framing different laws.

4.5 Relevance of Ex-ante in Indian jurisdiction

Like the regulators in the other jurisdictions, the ex-ante regulatory framework is also under discussion by Indian legislators, considering its potential impact on the competitive market. The major debate on the effectiveness of the ex-ante regime is whether it will be effective in the Indian context to adopt a rigid ex-ante regime, or whether the reliance should be placed on the ex-post regime. With the increase in the number of investigations into digital enterprises, it is argued by the proponents of the ex-ante regime that the proactive approach of the ex-ante regime is the most effective way to regulate the market. Conversely, the critics of the ex-ante regime consistently criticize the approach for its ineffectiveness due

[57] Digital Markets Regulation Handbook, Japan, Available at: *https://www.clearygottlieb.com/-/media/files/rostrum/dmrh/dmrh-japan_r1 (*Last Accessed on 07.06.2025)

[58] Big Tech Policy Tracker, Japan's Self-reporting Rules, Available at: *https://itif.org/publications/2025/05/25/japan-self-reporting-rules/ (*Last Accessed on 07.06.2025)

[59] *Digital Markets Regulation Handbook, Japan,* Available at: *https://www.clearygottlieb.com/-/media/files/rostrum/dmrh/dmrh-japan_r1 (Last Accessed on* 07.06.2025*)*

to its potential to create impediments to innovation. In its article named "*Ex-ante Rumble: Time for Big Tech Titans to Face Regulatory Fire"* by Mohd. Fahad Ansari, the author has pointed out:

> *"Ex-ante regulation emerges as a cutting-edge regulatory mechanism, distinct from the conventional ex-post assessment approach, which solely evaluates anti-competitive practices post-facto. In stark contrast, ex-ante regulation strives to prognosticate such anti-competitive practices prior to their occurrence, forestalling any detrimental effects on the market and ensuring expeditious rectification without compromising competition or consumer welfare.*" [60]

4.5.1 Importance of Digital Marketplace in Indian Economy: To understand the relevance of the ex-ante regime for the Indian context, the first and foremost consideration should be given to the present position of the digital market in India. The digital market is in the nascent or growing phase in India, as the growth of the digital sector has gained momentum in the past two decades. The question that is bothering the antagonist of the ex-ante approach is whether, at this juncture, when the digital giants are trying to tap the second most populous nation in the globe, imposing a stringent and so-called backward looking regulatory approach may put a brake on the evolution of this sector. On the other hand, the proponents of this approach consider the ex-ante regime to be the need of the hour, not only because of its vast adoption around the globe, but also because it can curb the increasing anti-competitive practices by invoking stringent rules. Thus, the need of the hour is to find a striking balance between these two extremities. While the ex-ante regime may seem backward looking, perhaps it is a preferred solution considering the complexities that have arisen in the market. The legislators need to understand the pulse of the market before implementing any new regulation is rolled out. The main thrust of the ex-ante regime is that it should be backed by empirical data.

[60] Mohd. Fahad Ansari, Ex-ante Rumble: Time for big Tech Titans to face Regulatory Fire, Available at: https://taxguru.in/corporate-law/ex-ante-rumble-time-big-tech-titans-face-regulatory-fire.html (Last Accessed on 08.06.2025)

4.5.2 Digital Marketplace from Government's perspective: To understand the position of the digital marketplace in India, significant importance to be given to the Government's perspective. By closely analyzing the present regulatory landscape of India, it can be concluded that currently India is in phase of shaping and reshaping and trying new legal policies in different sector. The digital sector is one of the prime areas where a handful of laws are under trial. The vision of Indian leaders can be easily traced by their remarks about the digital India. In an event the *Prime Minister of India Hon'ble Shri Narendra Modi mentioned that*

> "*I dream of a Digital India where high-speed digital highways unite the nation. I dream of a Digital India where 1.2 billion connected Indians drive innovation. I dream of a Digital India where government is open, and governance is transparent. I dream of a Digital India where technology ensures government is incorruptible. I dream of a Digital India where rural economy has access to e-healthcare. I dream of a Digital India where world looks to India for the next big idea."*[61]

At this point, Indian leaders are dreaming big with digitization, and a lot of reliance has already been placed on the growth of this sector. The main point of discussion is whether we need to move towards a comparatively rigid rule-based approach, or whether reliance should be placed on the existing ex-post approach, which is basically based on punitive action. CDCL has tried to collate input from different stakeholders of the digital market to understand the pulse of the market and the preferences of the digital market players. As expected, a mixed response has been received from different stakeholders of the Indian digital market, while the large digital players are not in favour of the rule-based approach, the small players of the digital market and the associations in different sectors are also advocating for a stringent rule to limit the control of the large market players.

[61] BI India Bureau, Digital India Week: PM tells us why we need Digital India, Available at https://www.businessinsider.in/digitalindiaweek-pm-tells-us-why-we-needdigital-india/articleshow/47899187.cms (Last Accessed on 08.06.2025)

Chapter V.
Analysis of Proposed Competition Bill

5.1 Unearthing the background

The "Committee on Digital Competition Law" (CDCL) was formed on 6th February 2023, on the recommendation of the Parliamentary Standing Committee on Finance, and the rationale behind forming the committee was to examine the need for an "ex-ante" regulatory mechanism for the evolving digital market of India.

The extant competition framework was formulated considering the traditional marketplace and precisely maintaining contestability, fostering a consumer-friendly business environment and ensuring fairness. With the evolution of the digital economy and rapid digitalization initiatives, the extant act has become inadequate to combat the issues that have cropped up due to the evolution of the digital marketplace. The modus operandi of the digital marketplace is technically and characteristically different from traditional market, thus it needs innovative solutions to combat the challenges of the digital marketplace. While drafting the Competition Act (CA, 2002), legislators primarily opted for the ex-post regime, except for the regulations for the combinations. An ex-ante approach was opted in Section 5 of the CA, 2002 with regards to the combinations. However, while assessing the risks posed by the digital economy, it was observed that the ex-post approach may not be adequate, and an ex-ante measure would be required. The CA, 2002 was formulated at a time when digitalization was yet to be adopted and explored by most nations. It was certainly not possible for the lawmakers to assume the present scale of digitalization and frame the law in a fashion that would be apt for the growing requirements of the digital marketplace.

Digitalization is under the lens of legislators for its probable negative effects on the market contestability and fairness. The market contestability and fairness are the key parameters for the innovation and growth of the market. Additionally, digitalization is recognized as the key driver for success, accordingly, all nations are trying to reap the benefits of the

same. At the same time, they are trying to frame a regulatory roadmap which can be helpful. A forward-looking regulatory regime can ensure market contestability and fairness. At this juncture, multiple nations are framing their competition legislation based on the ex-ante regime to build a fair and innovative market that can contribute to the growing economy of their nations.

The major rationale behind forming this committee is to evaluate the effectiveness of the extant competition law regime and to examine the feasibility of the ex-ante regime for the evolving digital marketplace of India. The starting point of discussion of CDCL committee was to observe and examine the global practices and recommend a "best-fit method" for the growing Indian digital economy.

In framing the conclusion and suggesting suitable recommendations, the CLRC noted both sides, i.e. the growing need for the ex-ante regime for the digital economy and the effect of stringent norms on the innovation and growth opportunities of the small or mid-sized enterprises.

5.2 Comprehensive Review of the Draft Bill

In this chapter, the core ideas behind the proposed draft Bill and its significant aspects are elucidated in detail to understand the effectiveness of the proposed Bill. This chapter will help us form an informed opinion about the functionality of the proposed Bill in the Indian context.

5.2.1 Rationale behind proposing "de-novo ex-ante" competition legislation

The rationale for proposing a "de-novo ex-ante"[62] competition legislation is discussed in detail in the report submitted by the CDCL. A dedicated chapter is included in the report to establish the reasoning behind proposing the ex-ante regime. In this sub-chapter, we will

[62] "De-novo" literally means "from the beginning". In the proposed Digital Competition Bill, de-novo denotes the proposed ex-ante regime is not an extension of the extant law, rather a completely new regime, different from the extant regime.

be discussing the reasons put forward by CDCL and critically analyze the same to understand its effectiveness.

5.2.2 **Complementary relationship between ex-ante and ex-post enforcement**

The first reasoning provided by the CDCL in support of the de-novo ex-ante regime is the complementary relationship between the ex-post and ex-ante regime. According to the CDCL *"traditionally, sectoral regulators, through ex-ante regulation set the rules of the game and competition authorities, through ex-post regulation, acts as umpires of the game*[63]. The CDCL noted that presently there is no specific authority for regulating the operations of the digital marketplace in India, it is regulated by numerous authorities/ministries, for example, Information Technology Act, 2000 (IT Act, 2000), Digital Personal Data Protection Act, 2023, (DPDP Act, 2023), Consumer Protection (E-commerce) Rules, 2020 (E-commerce Rules, 2020) etc. Considering the current market dynamics, it can be construed that an optimum balance between the ex-ante and the ex-post regime may be required to create a stable regulatory framework and to promote innovation and foster consumer benefits. The ex-ante regime establishes a legal certainty by determining a clear set of rules in the beforehand and the ex-post regime would offer flexibility to meet the needs of the dynamic market.

The ex-ante approach starts with a preconceived notion of the harm; the regulations are set on the basis of the market study of the past years; hence it can be concluded that the ex-ante approach is past oriented rather than forward looking.

The major point highlighted by the CDCL in their report that the extant CA, 2002 is operating as an ex-post framework, hence if a chapter with regards to the ex-ante regulation is included in the present act to deal with the digital market players, then the same may result in ambiguity.

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[63] *Committee on Digital Competition Law Report (CDCL), P.N. 91, Available at:* https://prsindia.org/files/parliamentry-announcement/2024-04-15/CDCL-Report-20240312.pdf (Last Accessed on 09.06.2025)

Although this reasoning of the CDCL is not completely agreeable; section 5 of the CA, 2002, has contained provisions with respect to "Combinations" which categorically operate in the ex-ante regulation model; the financial thresholds are prescribed and in case any proposed combination crosses the prescribed threshold, an express consent of the CCI is required. Hence, the reasoning that it may create ambiguity, or uncertainty is not sustainable as the same sort of rule is already present in the extant competition legislation.

5.2.3 Arduous nature of ex-post investigations- The second reasoning mentioned by the CDCL is the time-consuming nature of the ex-post investigations. The CDCL has mentioned the following with regards to the time-consuming nature of the ex-post investigations, "Investigations into incumbent players under the Competition Act, which begin after a contravention has occurred, are resource intensive and time-consuming. In the meanwhile, the market may irreversibly tip in favour of the incumbent and consequently drive out competitors."[64]

Numerous literatures available with regards to the competition regime that advocates in favour of the ex-ante regime as quick fix for the anti-competitive practices adopted by the entities; however, a thoughtful and time-bound solution can mitigate the risk of delay.

5.2.4 **Narrow Remedies-** The third reasoning provided by the CDCL in favour of the de-novo ex-ante regime is that the remedies provided by the ex-post regime are narrow. In a nutshell, the ex-post regime is a reactive mechanism where investigation starts with a complaint raised, furthermore the solution is provided for the particular complaint not for all the entities operating under the similar sector. Hence, advocates of the ex-ante regime treat this as an inadequate solution, while bringing in an ex-ante regime can regulate numerous entities operating under similar sectors.

[64] CDCL Report, P.N. 92, https://prsindia.org/files/parliamentry-announcement/2024-04-15/CDCL-Report-20240312.pdf (Last Accessed on 09.06.2025)

It is basically a case-to-case study that targets a specific type of complaint. However, the committee has failed to note that by conducting those investigations and penalizing the entities, CCI is establishing precedents, which also sets the market behiavour expected from the entities operating in India. Accordingly, it can be concluded that the solutions provided on a case-by-case basis by the CCI are narrow in nature and suitable for a specific case.

5.2.5 Basic structure of the draft bill

Post establishing the intention of the CDCL for recommending a "de-novo ex-ante" regulation, it has provided the proposed DCB as part of their report. The proposed DCB is segregated into eight chapters in aggregate and is focused on the following key points-

i. Identification of the Systemically Significant Digital Enterprises (SSDEs)
ii. Compliance requirements of the SSDEs
iii. Role of the CCI in regulating the SSDEs

The proposed DCB embodies the provisions with regard to the determination of the SSDE and also stipulates the provisions that to be complied with by the SSDEs.

As the thrust of the proposed DCB is on ex-ante regime, hence on meeting the threshold as mentioned in the proposed DCB, the SSDEs are supposed to declare the same and comply with the required provisions as mentioned in the proposed DCB. The proposed DCB will be supplemented with the required regulations for each mentioned core digital services.

5.3. Analysis of Proposed DCB

5.3.1 Decoding the Anti- Competitive Practices (ACPs)

The Standing Committee on Finance in their 53rd report on "Anti-competitive Practices by big tech companies" identified ten ACPs[65], and those ACPs are the cornerstone of the

[65] 53rd report on "Anti-competitive Practices by big tech companies, 22nd December, 2022, Available at: https://sansad.in/getFile/lsscommittee/Finance/17_Finance_60.pdf?source=loksabhadocs, (Last accessed on 10.06.2025)

CDCL report. The report submitted by CDCL has evolved around those ACPs. The proposed DCB is also formulated to address those ACPs, with significant influence from the DMA observable in the proposed DCB. In this chapter, we will discuss those ACPs.

5.3.1.1 Anti-steering- In general parlance, "anti-steering" means practices that prohibit steering; however, this terminology has a profound impact in the competition regime. By exercising this practice digital platforms prevent their consumers and business users from shifting to alternatives other than the original platform. In other words, it leaves users with limited options, resulting in a concentration of power in the hands of few.

This particular concept is under scrutiny by regulators of different jurisdictions. The concept of anti-steering and its negative effect on the competition garnered public attention by the famous case of Epic Games, where Epic Games complained against the digital giant Apple[66]. In an intriguing complaint against Apple in multiple jurisdictions, Epic Games alleged that Apple exercised anti-competitive measures for removing their application from Apple App store. It was highlighted that Epic Games established their own payment gateway system, instead of using Apple's payment gateway, which eventually led to the removal of their application from Apple App store. Simultaneously, Epic Games proceeded with similar complaints against Google at the same time. On March 4th, 2024, EC had imposed 1.84 billion Euro on Apple for exercising anti-steering practices.[67] Similar investigations are conducted by CCI in India as well.

5.3.1.2 Platform neutrality/ self-preferencing- Platform neutrality and self-preferencing, although, these two concepts have different nomenclatures, are conceptually similar. With regard to platform neutrality, as the name suggests, it means extending to extend similar

[66] Jeff Cochin, A New Era for the App Store? What Happened Between Epic Games and Apple, Available at: https://news.macgasm.net/legal-news/apple-vs-epic-app-store-fees/ (Last Accessed on 12.06.2025)

[67] Press Release, Commission finds Apple and Meta in breach of the Digital Markets Act, Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1085 (Last Accessed on 12.06.2025)

benefits to products/services offered by third parties and products/ services offered by the platform itself. This concept has its roots in utility regulation principles.

On the other hand, self-preferencing denotes the preference extended to own products/services over the products/services offered by third parties. From the above explanation, it is clear that these concepts are similar in nature.

A unique case of self-preferencing was "Google Shopping Case"[68]. This case garnered a lot of public attention as it uncovered a new area of concern. In 2017, the EU commission fined Google for abusing its dominance by differentiating between its own offerings and third-party offerings. In 2021, the General Court dismissed Google's action and upheld the EU Commission's judgement. This judgement pioneered a separate discussion on self-preferencing and opened a new stream of discussion before legislators.

5.3.1.3 Adjacency/Bundling and tying-

Adjacency or Bundling or Tying, all these have similar meaning and can be read together to understand a typical market practice, which is common in both traditional and digital marketplace. These practices have been used for decades, even before the existence of the digital marketplace was widely discussed. These practices are adopted for multiple reasons like disposing of old stocks, attracting consumer attention etc. However, with the evolution of the digital marketplace and rampant use of these practices by the players of the digital marketplace, induced a fresh debate on the subject.

These concepts are being discussed widely after the EU's action against Microsoft[69]. The cases began with the complaint received from multiple stakeholders of Microsoft against their practice of integrating their other products with the operating system. They were

[68] *Google and Alphabet v Commission* (Case C-48/22 P), 10 September 2024., Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62022CJ0048, (Last accessed on 13.06.2025)

[69] Microsoft Corp. v. Commission of the European Communities, Case T-201/04, Available at: https://curia.europa.eu/juris/showPdf.jsf;jsessionid=E56B0F58BCCFE1D4839A043DDD1190A5?text=&docid=62940&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=691898 (Last accessed on 13.06.2025)

accused of tying Internet Explorer with Windows, which eventually restricted the market share of other browsers. EU concluded that Microsoft is abusing the dominant position by tying their products and the same decision was upheld by the appellate jurisdiction as well.

5.3.1.4 Data usage (use of non-public data)- The usage of non-public data to leverage business by digital marketplace players has raised concerns among the law makers. Of late, on numerous occasions, it has been observed by the legislators that the consumer data stored in the platform is used by the digital market players to analyze the consumer preferences and consequently the same is utilized to compete with their competitors. In the era of digitalization, data has given utmost importance for the growth of any entity and as digital market players are storing ample non-public data of their consumers, hence they are in the advantageous position to analyze any data and use those data in their own benefit.

There are multiple cases across the globe with regard to the unethical usage of data by giants of digital marketplace. Multiple nations are tightening their data privacy related acts to prevent exploitation of personal or sensitive data. While the data protection related acts can prevent data exploitation, they are ineffective in the cases where the data is being misused for leveraging the benefits in favour of the business.

5.3.1.5 Pricing/deep discounts-The pricing strategies, including discounting policies, are adopted by entities to eliminate competition from the market. Let's understand how these concepts play a key role in the competition regime. These concepts are not unique to the digital marketplace; they are applicable to traditional marketplace also; rather it will be apt to mention that these concepts are borrowed from the traditional marketplace. Concepts like predatory pricing and deep discounting are dealt with in competition laws around the globe. In India the CA, 2002 and the corresponding rules have a separate set of regulations regarding predatory pricing and discounts. With the emergence of the digital marketplace, these concepts have taken different forms and opened up discussion about the usage of these unfair business practices in the digital marketplace.

Often digital market players offer deep discounts to eliminate competition from the market.

5.3.1.6 Exclusive Tie-ups- The "exclusive tie-ups" are regarded as anti-competitive as per the existing provisions of the CA, 2002. Per se, "exclusive tie-ups" are not anti-competitive in nature, however, as per the extant provisions if it has appreciable adverse effects on the competition in India then it is anti-competitive. It can be argued that the exclusive tie-ups are not distinct to the digital marketplace, and they are prevalent in the traditional marketplace as well.

Of late, CCI is investigating Amazon and Flipkart for the exclusive deals, although in the short run, these seem beneficial for the consumers, they may lead to monopolistic scenario by eliminating small businesses in the long run.

5.3.1.7 Search and ranking preferencing – In common parlance, search and ranking preference means giving preference to certain selected sellers/ service providers over others and extending benefits that are preferential in nature.

5.3.1.8 Restricting third party applications- This ACP is an extension of the anti-steering practices, as discussed above. However, with the emergence of the technology giants, this particular ACP has taken center stage and is being addressed with utmost sincerity by the legislators. Often the word interoperability is being used to denote the restrictions on the third-party applications. The giants of the digital marketplace tend to restrict users from downloading third-party applications in favour of their own applications.

Recently, multiple cases of such restrictions are being observed around the globe, with regards to the restrictions of the third-party applications. A famous example of this ACP is the restrictions imposed by Apple on third-party payment applications to provide preference to the products developed by Apple[70]. This particular practice of Apple is already highlighted by numerous jurisdictions.

[70] CCI seeks Apple's response on App Store antitrust investigation, August 8, 2024, Available at: https://timesofindia.indiatimes.com/technology/tech-news/cci-seeks-apples-response-on-app-store-antitrust-investigation/articleshow/112362 (Last Accessed on 12th June, 2025)

5.3.1.9 Advertising Policies- Advertising is regarded as one of the major sources of income for digital market players and the large digital players are using this mode carefully to promote either their own products or to promote their preferred sellers/service-providers products.

In numerous jurisdictions, this sort of complaint has already been lodged with the anti-trust watchdogs. As a growing concern, CDCL has highlighted this issue in their report and explicitly mentioned it in the proposed DCB.

The ACPs mentioned in the CDCL report are a reflection of the recent trend in the digital competition market. The recent anti-competitive practices adopted by the digital market players are the key concern of the regulators, hence in the report submitted by the CDCL, they have tried to elaborate the issues faced by the regulators and provided recommendations to regulate the digital marketplace.

Hence, to understand the effectiveness of the proposed law, a detailed study of the present issues faced by the regulators is to be deliberated.

5.4 De-coding of SSDE

The cornerstone of the DCB is the identification of the SSDEs and the entire DCB evolves around the determination and various parameters to identify the SSDE. The intention of the proposed DCB can be concluded from the preamble of the act, the act starts with "*an act, to identify systematically significant digital enterprises and their associate enterprises, and to regulate their practices in the provision of core digital services, keeping in view the principles of contestability, fairness and transparency*…"[71] This preamble sets the tune of the entire act and also clearly spells out the expectation or purpose of this act.

[71] Committee on Digital Competition Law (CDC), Report, Available at: https://prsindia.org/files/parliamentry-announcement/2024-04-15/CDCL-Report-20240312.pdf (Last Accessed on 12th June, 2025)

Since the entire DCB is built on the identification of the SSDE, hence a comprehensive study on the approach taken by the numerous nations in determining the applicability is studied by the CDCL. During their study, the CDCL broadly bifurcated two approaches, one which is adopted by the EU, Japan and Australia, where a host of digital services are brought under the purview of the dedicated digital competition act, and another where the digital act is extended to all digital service providers, irrespective of the nature of services provided by them. The latter approach is adopted by the nations like UK, Germany etc. After an exhaustive study of the approaches adopted of different nations, the first approach, the one adopted by the EU is regarded commensurate with the requirement of the Indian market by the CDCL. Accordingly, rather than applying to all digital market players, DCB is applicable to a few services which are regarded as the "Core Digital services".

There are a series of checkpoints that need to be checked to identify a SSDE, let's discuss one by one-

5.4.1 Identification of the "Core Digital Service": The starting point of the determination of the SSDE is the identification of the business type of the digital marketplace. Schedule 1 of the proposed DCB has identified nine services as the "Core Digital Service" and if the business of a digital marketplace falls under the purview of any of those nine services, then it will move forward towards the next check point. As per the proposed DCB, the following are the designated as the "Core Digital Service"-

i. Online Search Engines
ii. Online Social Networking services
iii. Video-sharing platform services
iv. Interpersonal communications services
v. Operating systems
vi. Web browsers
vii. Cloud services
viii. Advertising services
ix. Online intermediation services

After evaluating the present trend and determining the effect of the above-mentioned service providers on the marketplace, CDCL has listed the above-mentioned services as core digital services.

5.4.2 Financial/quantitative parameter: The following check point after determining whether the digital market player falls under the purview of the "core digital services" is to determine whether the digital market player has significant presence or not. The criteria to identify whether the digital market player is to identify as a SSDE to meet if that provider is meeting the financial/quantitative parameters or not. The quantitative parameters are grouped under two broad sub-sections; while the first group is referring to Indian turnover, global turnover, gross merchandize value in India or global market capitalization, the other sub-section is talking about the number of business users or end users.

While qualifying as a SSDE, a digital market player needs to meet the financial parameters provided under the proposed DCB, however, to broaden the scope, certain extended power is vested on the Commission; the commission on their own assessment and based on the information available with them, can designate any digital market player as SSDE if they are on opinion that the enterprise has significant market presence. Although, a list of factors has been mentioned in the proposed DCB with regards to the factors to be accessed by the Commission while determining the market presence of any enterprise, however, an enormous reliance has been posed by adding the following factor, "any other factor which the Commission may consider relevant for the assessment". This particular clause can create ambiguity in future because it is an extension of the power posed on the Commission, while the aim of the Commission would be to regulate the market by curbing chances of concentration of the power, conversely the aim of the digital market players would be to challenge the decision taken by the Commission.

Another important piece of the proposed DCB is the identification of the "Associate Digital Enterprise". To designate as the Associate Digital Enterprise, an enterprise needs to meet the following-
Should be part of the same group of SSDE

Should provide Core digital service.

Chapter III[72] of the proposed DCB sets out the obligations of the SSDEs, although the specific obligations are not addressed in the proposed DCB. The onus of setting the regulation for each digital core service is entrusted to the CCI. While the power to set the regulations are not detailed in the proposed DCB, however a set of ACPs which are the underlying rationale for framing of the regulations are addressed in this chapter.

5.5. Extended Role of CCI

Chapter IV[73] and V[74] of the proposed DCB embody the rules relating to the CCI. While Chapter IV discusses the power of the CCI in conducting inquiries, Chapter V discusses the power of the CCI and DG. The roles, powers and responsibilities of the CCI and DG are similar of the same entrusted in the CA, 2002. Like the CA, 2002, if the CCI is of the opinion that any price-facie case exists, it can order the DG to conduct an investigation against the SSDE and the Associate Digital Enterprise for the contravention of the provisions of the proposed DCB.

On careful evaluation of the proposed DCB, it can be construed that it has extended the ambit of the CCI and DG by adding additional responsibilities of regulating the SSDE and Associate Digital Enterprises.

[72] Chapter III, Obligations on systemically significant digital enterprises and other associate digital enterprises
[73] Chapter IV, Power of the Commission to conduct an Inquiry
[74] Chapter V, Power of the Commission and Director General

Chapter VI

Beginning of a new Compliance Regime- A Way Forward

6.1 Impact of the European Digital Markets Act on Indian Market

The Digital Markets Act (DMA) of the EU has been under the lens of digital policymakers from the time of its promulgation. As a trailblazer of this domain, it has garnered attention from legislators of different jurisdictions, as the implementation of similar laws elsewhere largely depends on the success of the DMA. The DMA is used as a model law for the legislators of different jurisdictions and nations around the world; they are formulating their domestic competition laws regarding digital players with the DMA in mind. According to economists and a handful of the legislators, as the DMA is still in the nascent stage, it is too early to predict its success or to idolize it as a template for similar domestic laws.

Post its enactment, till date, seven digital giants have reported as "Gatekeeper" as per the provisions of the DMA, those are Alphabet Inc., Amazon.com Inc., Apple Inc., Booking Holdings Inc., ByteDance Ltd., Meta Platforms, Inc., Microsoft Corporations.[75] As per the provisions of the DMA these Gatekeepers need to disclose pertinent information with regards to their business, which can largely impact the contestability or cast a negative impact on the fairness. Although the DMA is in the nascent stage, it has already involved into the nitty gritty of the fair competition practices. The recent cases with regard to X[76] and Apple[77] show their proactiveness in regulating the market and protecting the interest of the start-ups and also in fostering the interest of the consumers at large.

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[75] Press Release- European Commission, Digital Markets Act: Commission designates six gatekeepers, 6th September, 2024, Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4328, (Last Accessed on 15.06.2025)

[76] Commission concludes that online social networking service of X should not be designated under the Digital Markets Act, Available at: https://ec.europa.eu/commission/presscorner/detail/en/mex_24_5324 (Last Accessed on 15.06.2025)

[77] Commission sends preliminary findings to Apple and opens additional non-compliance investigation against Apple under the Digital Markets Act, Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3433 (Last Accessed on 15.06.2025)

While legislators in numerous jurisdictions are following the DMA to frame their domestic laws, international organizations like the OECD[78] and UNCTAD[79]are closely monitoring the applicability and effectiveness of the DMA, as the smooth functioning and success of international trade largely depends on the success of the DMA. The major apprehension of global organizations is that the ex-ante regime may impose unnecessary burdens on digital market players, which could hinder the growth of the digital marketplace.

6.1.1 Recent Instances

With the introduction of the DMA, a plethora of challenges has cropped up for the regulators. It has paved the way for new ambiguities and uncertainties, which form the bedrock of multiple regulatory battles. During the past two years, since the advent of the DMA, a few significant issues have been navigated by the regulators which will shape the future of the digital marketplace. A few pertinent and recent regulatory challenges that posed a significant question before the regulators were delved into below-

6.1.2.1 Fine on Apple on breach of "Anti-steering" provision[80]- On a press release dated 23rd April, 2025, EU Commission found that Apple is on breach of the anti-steering provision of the DMA and consequently imposed a fine of Euro 500 million. The EU Commission concluded its findings and imposed the fine after giving the company an opportunity to put forward their stance on the allegation and reviewing their submissions.

As per the provisions of the DMA, the customers must be given a fair chance to decide on the purchases they want to make, and it is the obligation of companies to provide this opportunity free of charge. The DMA categorically prohibits gatekeepers from restricting business users, such as application developers, from offering their products and services to the end users and requires that business users be allowed to communicate and promote their offers and enter into contract with the end users, without being charged by the gatekeepers.

[78] Organisation for Economic Co-operation and Development
[79] United Nations Conference on Trade and Development
[80] C/2025/3235- European Commission, 23rd April 205

It was found by the EU Commission that Apple is in breach of the above-mentioned provision of the DMA.

6.1.2.2 Fine on Meta on breach of "choice of a service" provision- In the same press release on 23rd April 2025, Meta was also penalized and a fine of Euro 200 million[81] was imposed, for non-compliance of the provision of providing choices to the end users[82]. As per the extant provisions of the DMA, entities must seek consent for combining the personal data of the users across the services.

In November 2023, Meta introduced a unique plan for the EU users where they were asked to pay if they did not consent to combining their personal data across the services. After due deliberation, this policy was changed in November 2024. While the investigation into the new policy introduced by Meta is yet to be completed by the EU Commission, Meta was penalized for the interim period of March to November 2024. The fine imposed on Meta was decided on the basis of the gravity and duration of the non-compliance.

6.1.2.3 Guidance on "Interoperability" to Apple- In a recent legally binding decision on 19th March 2025, the EU Commission[83] provided guidance to Apple on the interoperability function. Interoperability is a distinct provision of the DMA, which ensures contestability in the market. This provision ensures seamless integration of third-party products with giant market players. In the recent decision, comprehensive guidance was provided by EU to Apple regarding interoperability for connected devices and transparent and effective

[81] Press Release- Commission provides guidance under Digital Markets Act to facilitate development of innovative products on Apple's platform, 19 March, 2025, Available at: https://digital-markets-act.ec.europa.eu/commission-provides-guidance-under-digital-markets-act-facilitate-development-innovative-products-2025-03-19_en#:~:text=The%20measures%20will%20grant%20device,%2Dup%20(e.g.%20pairing).(Last Accessed on 16.06.2025)

[82] Commission finds Apple and Meta in breach of the Digital Markets Act, Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1085 (Last Accessed on 16.06.2025)

[83] Commission provides guidance under Digital Markets Act to facilitate development of innovative products on Apple's platforms, Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_25_816 (Last Accessed on 16.06.2025)

interoperability requests. Specific timelines were also mentioned in the decision, within which Apple has to implement the stipulations set out in the decision. Along with the guidance on interoperability requests, Apple is also expected to provide a detailed public disclosure to maintain transparency regarding interoperability.

This decision indicates the proactive nature of the regulators with regards to the maintenance of fairness in the digital marketplace.

6.1.2.4 Position of X as "Gatekeeper" under DMA"- In an intriguing order, the EU Commission on 16 October 2024[84] confirmed that the online social networking service of X should not be designated as a "Gatekeeper" under the DMA. Earlier on 13 May 2024, upon submission of rebuttal arguments by X, the EU Commission launched an in-depth investigation into the the status of X as a potential "Gatekeeper". Following the submission of the arguments by X, the EU Commission conducted an investigation, by analyzing the submissions of X, collating inputs from stakeholders, and consulting with the Digital Markets Advisory Committee. The announcement undoubtedly provided relief to Elon Musk led X, as qualifying as a "Gatekeeper" under the DMA will lead to the detailed disclosures and an increased burden of compliances.

6.1.2 Effect of DMA on the Digital Marketplace

The ex-ante regime of the DMA of the EU is clearly bifurcated economists and market players into two groups, where a set of economists and market players are supporting the pro-competitive intention of the DMA, the other group is clearly opposing the same by criticizing it for its negative impact on innovation.

The main objective of the DMA is to maintain market contestability. Contestability is considered significant for promoting fairness and transparency in the marketplace.

[84] Commission concludes that online social networking service of X should not be designated under the Digital Markets Act Available at: https://digital-markets-act.ec.europa.eu/commission-concludes-online-social-networking-service-x-should-not-be-designated-under-digital-2024-10-16_en (Last Accessed on 17.06.2025)

"*Where contestability is absent, either because of anti-competitive strategies by some of the participants or because of the supply or demand conditions prevent it, we lose important benefits, and incur a serious risk that existing market position will be leveraged into additional areas or otherwise unfairly exploited*."[85]

In their recent report ECIPE[86] criticized DMA by saying "*By prioritizing static over dynamic competition, the DMA could impede technological progress, limiting consumer choice and long-term economic benefits*."[87]

The entrenched market position, their long-term difficulty in overcoming it, and the unfair leverage obtained by the market giants from that entrenched position are the main concerns of the economists and regulators who are in favour of the ex-ante regulatory regime. According to the advocates of the ex-ante regime, this regulation seeks to reduce the barriers to entry and pro-actively opens the market for the competition by its positive obligations like interoperability, data portability, data sharing, fair access, facilitating multi homing among others.

There are a few arguments that have been put forward by the advocates of the DMA, they are-

a) **Long resolution time for competition cases-** In the ex-post regime, it takes comparatively longer to resolve a competition case, and this delay can be exploited by the digital market players. They can leverage the delay and can use the benefit of the same in maximizing their profit.

[85] Amelia Fletcher, Jacques Cremer, Paul Heidhues, Gene Kimmelman, - the Effective use of economics in the EU Digital Markets Act, June 2024, Available at: https://academic.oup.com/jcle/article/20/1-2/1/7513584 (Last accessed on: 20.06.2025)

[86] European Centre for International Political Economy

[87] Bauer, Matthias, Pandya, Dyuti Sharma, Vanika- *EU export of regulatory overreach: The case of the Digital Markets Act (DMA)- Policy Brief ECIPE 08/2025,* Available at: https://ecipe.org/publications/eu-export-of-regulatory-overreach-dma/ (Last accessed on: 20.06.2025)

b) **Narrow outcomes-** As competition law under the ex-post regime works on a case specific basis, it addresses only individuals cases and fails to create broader deterrence by instilling awareness among other market players. It generally focuses on the facts of a specific case; hence, it has a limited role in setting an example or providing guidance for other market participants.

c) **Constrain on resources-** At present competition authorities around the globe are dealing with resource related issues, while evidence intensive cases required a lot of resources for the timely resolution of anti-competition related cases.

6.2 Global Trend

The nations around the world are evaluating and evolving their digital competition laws by modeling the DMA of the EU. Of late, numerous nations have amended or proposed a new piece of legislation with regard to the competition jurisprudence of the digital sector. These exemplify the importance that law makers in different jurisdictions are giving to the digital sector. The status of digital competition regulation regime of different nations is detailed in the table below.

Table-1

Sr. No.	**Name of Country**	**Proposed/ Enacted Law**	**Status**
1.	UK	DMCCA	Partial enforcement began in April, 2025
2.	Japan	SSCP	Will be effective from December, 2025
3.	Australia	Proposed Digital Competition Regime	In consultation phase
4.	Canada	Proposed bill	In consultation phase
5.	UAE	Proposed bill	In consultation phase

The above-mentioned table clearly exemplifies the recent global trend towards the ex-ante regime. This shows a higher reliance on rule-based principles and a tendency to move towards rigid norms for the digital marketplace.

The major criticism of this global approach is following a global trend without relying on the economic and market conditions of a particular nation. The ex-ante rule can be helpful for a mature market like the EU; however, the same approach cannot be suitable for a developing economy. A global trend of following the DMA of the EU is clearly visible by the recently proposed or enacted legislation around the world. While it can be relevant for developed digital markets such as the USA, UK, China or Japan but it clearly creates a hinderance to the digital market players in the developing markets such as India, Brazil etc. In developing economies, there are still many growth opportunities for digital market players. To reap the benefits of those opportunities, a market friendly regulation would be required for the growth of the economy.

6.3 OECD Perspective on Digital Competition

OECD, the international organization whose aim is to promote economic progress, foster trade, and support global development, has taken a centrist position with regard to its view on the traditional approach to competition versus the rule-based approach, i.e. the ex-ante regime. As the comparatively rigid framework of the ex-ante regime may create impediments to the growth of trade, which is a major aim of the OCED, the OECD's position is critical with regard to the global trend of inclination towards the ex-ante regime.

According to the OECD, a fine balance between both regimes may create an apt solution to tackle the challenges stemmed from the digital market players. *For some issues, such as those related to anti-steering practices and platforms use of competitors data, there is considerable convergence between the numerous ex-post enforcement remedies which are in place and the new ex-ante obligations and prohibitions*.[88]

[88] Fredrik Erixon, Dyuti Pandya and Vanika Sharma- India and the world economy - Policy Brief ECIPE 07/2025, Available at: https://ecipe.org/wp-content/uploads/2025/03/PR-PB-072025.pdf, (Last accessed on: 21.06.2025)

At the 2025 Competition Day celebration of the OECD, a discussion on revitalizing competition was held, and apprehension over the recent market complexities were considered; while healthy competition is regarded as the key driver for the market growth, it was also mentioned that "Competitive intensity in markets has been declining across the OECD. Between 2005-2018, the rate of market entry by new firms dropped by 1.3% in 16 OECD countries, with the decline being more pronounced in digital industries.[89]

The key focus of the OECD is the promotion of trade and business, and that is practically possible by strengthening the competitiveness of the market and preventing the aggressive abuse of the dominant position of the large market players. However, a static and old-fashioned rule-based approach may not be suitable for evolving market dynamics, and accordingly, the OECD is advocating for a fine balance that can only be achieved[90] through the co-existence of both ex-ante and ex post regime at the same time. Optimal use of both regimes may create a balanced situation, which will eventually act as a catalyst for the growth of the economy.

In the evolving landscape of the business, digital players are the accelerators of the economy, hence any rigid or backward-looking step may create a hinderance for the growth of this sector. The OECD emphasized the need for tailored enforcement for the digital entities which will provide faster resolution considering the need of the digital sector. The drop in the new entrants in the digital sector has raised considerable concern; presently the thrust is to find out the reason for the drop of new entrants and further to work on the solution to combat the same.

[89] 2025 OECD Competition Day explores how to future-proof competition policy- - Blog, 11 March, 2025. Available at: www.oecd-events.org (Last accessed on 13th June, 2025)

[90] Bauer, Matthias, Pandya, Dyuti Sharma, Vanika- EU export of regulatory overreach: The case of the Digital Markets Act (DMA)- Policy Brief ECIPE 08/2025, Available at: https://ecipe.org/wp-content/uploads/2025/04/PR-PB-82025.pdf, (Last accessed on 13th June, 2025)

Furthermore, according to the OECD the "one-size-fits-all" approach is not suitable for this sector; as economic status of nations is different around the world, hence, the solution which can be used as optimal in developed nations, can act as devastating for the developing nations.[91] In developing nations, digital market players are trying to create their market; hence, at this juncture, if the regulators try to adopt the solutions implemented by developed nations, that may not be suitable considering the economics of scale of those nations. A balanced and commensurate approach is preferred, considering the economic condition of each nation.

6.4. Preference of Indian Stakeholders

The preference of the Indian market players can be ascertained by the "Summary of Stakeholders Submission" part of the CDCL report[92]. Before submitting its report, CDCL had gathered the opinion of the key stakeholders on the proposed DCB. A clear demarcation of the two sets of opinions can be drawn from the collated submissions. While most of the national federations and mid-sized firms are in favour of the ex-ante regime, predictably the large digital players like Amazon, Meta, Google etc. are not in favour of the same[93], considering the setback they are already facing with the DMA. The submission of the advocates of the ex-ante regime stems from the recent trends in the developed economies like the EU region, USA, UK etc. Large digital market players like Meta, Google, Apple are already under investigation in numerous developed jurisdictions. Post enactment of the DMA, there have been a series of investigations that are happening on the policies adopted by Apple, Meta, Amazon etc. In the months of March and April of 2025, the EU

[91] Ex-ante Regulation in Digital Market- OECD Secretariat Background Note, Available at: https://one.oecd.org/document/DAF/COMP(2021)15/en/pdf, (Last accessed on 13.06.2025)

[92] Committee on Digital Competition Law (CDCL) Report, P.N. 126 , Available at:https://prsindia.org/files/parliamentry-announcement/2024-04-15/CDCL-Report-20240312.pdf (Last accessed on 13.06.2025)

[93] Committee on Digital Competition Law (CDCL) Report, P.N. 127, Available at: https://prsindia.org/files/parliamentry-announcement/2024-04-15/CDCL-Report-20240312.pdf (Last accessed on 13.06.2025)

Commission issued significant guidelines with regard to several major policies of Apple. In its recent press release, the EU Commission initiates investigation against Meta and Apple.[94] Thus, these guidelines and regulations have created uncertainty in the operation of these large digital players.

At this juncture, if India rolls out a similar law like the DMA in the Indian market, then it will affect the overall commercial operations of the large digital players. Conversely, the mid-size and domestic digital players are already suffering from the dominance created by these large players, and they are looking for a proportionate law which can foster fairness in the market by preventing the unfair practices adopted by the large market players[95]. With the advent of the DMA, the large market players are forced to relook into their policies and also bring in unique policies for the EU users, which eventually promote fairness in the market. Recently, Meta had to withdraw their "consent or pay" policy which they opted for the combining of the personal data of the users for the different services[96]. Similarly, Apple restricted third party app developers to offer their products through the Apple play store[97]. If a similar protection like the DMA is rolled out in India the mid-sized firms will definitely get benefitted, and eventually that will lead to the innovation of new products and services. In aggregate, the end users are going to benefit from the increase of the competition and ample product offerings.

A middle way has been indicated by the home-grown food aggregators of India, i.e. Swiggy and Zomato. Zomato and Swiggy both have highlighted the need to meet the requirements

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[94] Commission opens non-compliance investigations against Alphabet, Apple and Meta under the Digital Markets Act, Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_24_1689 (Last accessed on 13.06.2025)

[95]Committee on Digital Competition Law (CDCL) Report, P.N. 127 , *Available at:* https://prsindia.org/files/parliamentry-announcement/2024-04-15/CDCL-Report-20240312.pdf (Last accessed on *13.06.2025)*

[96] BEUC Assessment of Meta's Latest Pay-or-consent Policy for Facebook and Instagram Users, A*vailable at:* https://www.beuc.eu/sites/default/files/publications/BEUC-X-2025-002_Meta_s_latest_pay-or-consent_policy.pdf (Last accessed on *13.06.2025)*

[97] BEUC Assessment of Meta's Latest Pay-or-consent Policy for Facebook and Instagram Users, *Available at:*https://www.cnbc.com/2025/06/26/apple-eu-500-million-euro-app-store.html (Last accessed on *15.06.2025)*

of the start-up ecosystem of the country, which is in the process of evolving[98]. According to their submission, similar guidelines for all digital market players may impact on the start-up players as they will meet the thresholds prescribed by the proposed DCB, however being a start-up, they may not be equipped to handle the overwhelming compliance requirements posed by the ex-ante regime. Swiggy also highlighted the market share of digital market of India vis-à-vis EU. Since the Indian digital market is still at the nascent stage, it should not adopt a regulation that is articulated for a modern market like EU, which is already well developed and dealing with complex issues. In a nutshell, they have advocated for a fine balance, a balance between regulation and the need for innovation. In the last decade, a sizeable number of Indian start-ups emerged and in the process of evolving in the prominent market players. Even the government is also re-looking into the extant acts and regulations and simplifying those for the growth of the start-up sector. Accordingly, any stringent law may create impediment in the growth of the emerging start-up sector of India.

On the other hand, the government associations are vocal in their support for the ex-ante regime[99]. The intention behind their support for the ex-ante regime stems from the need to match the global trend. Due to globalization, the need for harmonized laws has been felt over the past few decades. Accordingly, a number of committees have been formed and entrusted with the objective of revisiting the extant laws and recommending modifications wherever necessary. In similar vein, observing the present trend a committee on digital competition was also formed to identify the gaps in the present legislation with regard to the digital market players. Upon identifying the absence of a comprehensive piece of legislation on digital players, the committee recommended the DCB.

[98] Committee on Digital Competition Law(CDCL) Report P.N. 131, Available at:https://prsindia.org/files/parliamentry-announcement/2024-04-15/CDCL-Report-20240312.pdf (Last accessed on 15.06.2025)

[99]Committee on Digital Competition Law (CDCL) Report P.B. 135,Available at https://prsindia.org/files/parliamentry-announcement/2024-04-15/CDCL-Report-20240312.pdf (Last accessed on 15.06.2025)

Another key factor which is driving the government towards the ex-ante regime is ongoing anti-competitive investigations against the large digital market players. The time-consuming nature of the investigations is creating major concern for the legislators. A significant concern that garnered the attention of the legislators was whether the CCI is adequately manned to investigate the concerns raised by the digital market players or not. The operating processes of the digital market players encompass sophisticated technical matters. To investigate those matters, the CCI needs to be equipped with technical experts and also requires adequate time to combat the issue. In their recent report, it is highlighted by the CCI that it has inadequate manpower, hence, would it be prudent to combine all the investigations with regards to the competition in the hands of the CCI? These are some crucial questions which have cropped up before the legislators.

Chapter- VII
Conclusion and Suggestion

At this juncture, where nations around the globe are inclining towards the ex-ante regime and framing a separate law, should India go ahead and adopt the global practice, or is it time to create its own model that could serve as a benchmark for developing nations? With a diversified population, Indian digital market players operates differently, and adopting a model law equivalent to that of the European market may hinder the growth of the market.

Every aspect of the CDCL report is thoroughly examined to understand the intention of the legislators. To supplement the final findings of the study, a close analysis is being conducted on the EU's DMA and the opinion of global organizations regarding the effectiveness of the DMA. In order to form an effective opinion on the current needs of the digital marketplace within the Indian economic context, the present challenges of the competition regime in the Indian economy are also being closely monitored.

During the study, it was found that although the DMA is working towards the objectives specified in the preface of the act- namely, maintaining fairness and contestability- it is too early to use it as a model law. In a nutshell, a "one size fits all" approach cannot be adopted for the evolving digital sector. The digital sector has distinct traits that have created their own complexities. As the saying goes, modern problems need modern solutions. A solution that may be regarded as appropriate for the developed nations cannot be assumed to be suitable for the developing nations. At present, multiple developing nations are also considering the ex-ante regime for their digital markets. The toughest question for the legislators in developing nations is whether the ex-ante regime would be seen as backward looking and potentially put a brake on the growth of the nation. Global trade organizations such as the OECD and UNCTAD have already criticized the approach the adoption of the ex-ante regime, arguing that its overreaching effect of the ex-ante regime could negatively impact international trade.

At this juncture, while India is thriving to be a global leader by 2030, economic growth is also one of the major factors for this growth. Considering these factors, if India is planning to adopt the model adopted by the UN or other developed nations, it could create a barrier to its growth. It is time to adopt a policy that will act as a trailblazer and may put India a step ahead on its path to becoming a global leader.

The DMA is being highly criticized for the use of vague terms like fairness and market contestability. Adopting vague terms that open up the arena for broader interpretation will lead to ambiguities and uncertainties. At this moment, when India is striving to become a global leader, the most coveted goal is to provide a stable economic environment for the growth of the entities. Accordingly, the mere adoption of the DMA is not going to provide the desired result that the market is seeking at this present moment. With the adoption of the DMA, global digital giants are already grappling with the burden of over regulation and have been forced to implement different policies for the EU citizens. Hence, India needs to offer a stable and business friendly environment to digital players so that it can attract more global players and provide opportunities to expand the businesses of existing business players.

On the other hand, another side of this debate is the protection of the rights of users. Along with the promotion of trade, the protection of consumer rights must also be taken care of by the lawmakers. With the rise in complaints against the global giants, it should also be noted that the rights of users must be considered with utmost importance. The major point in favour of the ex-ante regime is that it can assist in protecting the rights of the users by fostering competition. In this research paper, by analyzing all angels of the present issues, it can be concluded that a balance between both sides of the present issues can be achieved without adopting the ex-ante regime. The ex-ante regime is not the only answer to the current issues faced by the Indian digital marketplace. It is simply required to adopt unique solutions. The extant CA, 2002, has already addressed the majority of issues the digital marketplace is facing at present, such as abuse of dominance, anti-steering, which are already captured in the current CA, 2002. At present, the need is to supplement the current regime with the innovative provisions to make it a robust framework. In 2023, an

amendment was made to the extant CA, 2002 and the hub-and-spoke model was added. Although the term hub-and-spoke is not used explicitly in the amendment, the provisions were added to curb the malpractices adopted to reap the benefit of the hub-and-spoke model. Accordingly, at this juncture, rather than adopting a completely new set of laws, the focus should be centered on reworking on the existing law and equipping the same with the provisions that can foster economic growth by keeping in view e contestability and fairness, and also by protecting the rights of the consumers.

Rather than adopting a new set of laws for the regulation of the digital marketplace, a few amendments may be proposed to the existing CA, 2002. At this moment, adequate proof is not available to establish the efficacy of the ex-ante regime in regulating the digital marketplace. Accordingly, Indian legislators should try to establish a fine balance between the requirements of the economy and the need to maintain market contestability and fairness. The following are certain recommendations that the legislators can consider for framing a robust regulatory framework-

1. **Introduction of new chapter with regards to the Digital Marketplace**: A new chapter to regulate the business practices of the digital marketplace may be annexed to the existing CA, 2002. The chapter should deal with the issues that are not already covered under the existing CA, 2002, such as interoperability etc. Rather than enacting a separate act, it would be comparatively convenient to add a dedicated chapter to regulate the digital market players. Enactment of a new act would involve numerous layers of approval; additionally, it would also include a lot of stakeholder participation. Those procedural complexities could be avoided if a chapter is added to the existing act. The extant act with regards to the competition is comparatively the latest, and it has been amended quite a few times to evolve as contemporary law. Hence, it would be prudent to amend the existing act and add a dedicated chapter for the digital market players.

2. **Separate investigation wing for the digital market players:** The investigation wing of the CCI should be restructured by creating a new investigation division to deal with issues relating to the digital marketplace, such as “Director General- Digital

Competition Wing", comprising experts from digital background or technical experts who are well versed in the evolving technologies of the digital area. At present, the investigation division of the CCI is not adequately manned to handle complex digital issues, as it requires domain knowledge and sound technical expertise. To understand contemporary issues, a lot of technical knowledge is required, hence a separate or dedicated wing with sound technical knowledge may make a difference in the digital marketplace.

3. **Time-bound Resolution Process**: A time-bound resolution is to be proposed, such as the investigation being completed within a specific timeline from the receipt of the complaint. Currently, the major issue with which the CCI is struggling is the prolonged time taken to provide resolutions for complaints raised regarding anti-competitive practices or abuse of dominant positions by the digital market players. Due to the prolonged investigation procedure, large players are leveraging the situation and making undue profit from the same. These practices at certain times push new players out of the market. Hence, a time bound resolution would assist in maintaining fairness and contestability, which eventually promotes user benefits and leads to economic growth.

4. **Formation of Technical Review Committee:** A technical review committee is to be formed to constantly monitor the evolving issues with regard to the digital marketplace. As an evolving marketplace, it requires continuous monitoring to understand any potential impact on the market from abuse in the digital marketplace. Although anti-competitive practices are mostly similar in both traditional and digital marketplaces, due to the involvement of technology, digital marketplace seems to be far more complex than the traditional marketplace. In addition to that, because of the long history, users are mostly familiar with the practices of the traditional marketplace; hence it is mostly easy to draft laws with regard to that. On the other hand, legislators are yet to figure out the complexities of the digital marketplace.

5. **Restriction on the number of appeals**: Another challenge for the effective functioning of the competition jurisprudence is the scope of multiple appeals. The aggrieved party in competition cases can approach the High court and can finally approach the Apex Court as well. These multiple options ultimately make the process more complex and drag it on for numerous years. Even interim measures can be sought during prolonged court battles. Although multiple appellate opportunities are intended to provide fair opportunities to the parties, this has had a negative impact on competition jurisprudence, and the CCI has failed to enforce its orders on a timely basis. Accordingly, it is recommended to provide limited grounds to challenge the orders passed by the CCI and also to provide a maximum time limit to conclude digital market related cases.

The above-mentioned recommendations, if meticulously evaluated and implemented, can act as a trailblazer in the arena of the global digital marketplace. They can be modelled by developing nations that are still thriving to reap the benefits of digital players. These recommendations can bring the desired results in striking a fine balance between the demands of the economy and protecting the rights of the users. As developing nations still have a long way to go, these recommendations can work as a catalyst. At this moment, competition jurisprudence has no proven way to handle the current issues, and a trial-and-error method has already been adopted by nations around the globe. Hence, it is the right time to put forward a unique model which can set an example, without negatively impacting the booming sector of the economy. It can instead set an example for the globe, and India, being a trailblazer, may move a step forward toward being a global leader in alignment with the government's Vision 2030.

In this research paper, although an extensive study is being made to understand the impact of the DMA, which acts as a model law for curbing the malpractices adopted by digital market players, however, the proposed law of other developing counties, such as Brazil, which is also considering an adequate law for digital players, are not evaluated. As the proposed DCB of India has evolved by modeling the DMA, this research paper is focused on understanding the effectiveness of the DMA in the Indian market. The entire focus of this research paper is to understand the DMA and map the same with the extant regulatory

landscape of India regarding competition and digital platforms. The report submitted by CDCL also focused on the DMA to propose their recommendation.

However, in the future, an extensive review may be conducted to understand the law proposed by other developing countries. Although the economic situation of India is largely different from other developing nations, it would not be accurate to compare the India scenario with that of other developing nations. Indian law should be developed by considering the requirements of the economy and the vision of the government, if we want to create an effective law that remains effective relevant for the long tenure. India, being a unique jurisdiction culturally, needs a law that can address unique Indian issues; hence, modeling the laws of other jurisdictions may not be appropriate. Nonetheless, Indian legislators can definitely refer to similar laws from other jurisdictions, but it is right time to set an example by adopting new ways to combat our unique issues and also to exemplify India's own regulatory regime that can be modeled by other jurisdictions.