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# **“BALANCING INNOVATION AND REGULATION: ASSESSING INDIA'S PROPOSED DIGITAL COMPETITION BILL, 2024”**

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## **ABSTRACT**

The digital economy worldwide, especially in India, has seen unprecedented growth in recent years. However, this growth has also created challenges and exposed the market to new problems like anti-competitive practices by dominant digital enterprises. In response to these challenges, a Committee on Digital Competition Law was set up to evaluate the existing framework and propose a draft Digital Competition framework. The committee aimed to evaluate the current legal framework regulating competition and to propose a draft Digital Competition Bill. The bill recommends that the Competition Act, 2002 has an ex-post approach, and the proposed draft bill aims to establish an ex-ante approach to address market challenges before they occur.

This paper analyzes the necessity of the Draft Digital Competition Bill, 2024. The bill addresses the unique challenges of the digital market, such as the tendency for enterprises to monopolize. However, it also raises concerns about its effects on small-scale enterprises and its alignment with international best practices. Therefore, by analyzing the scope, enforcement mechanisms of the draft bill, and the committee's recommendations, this paper critiques whether the proposed legislation adequately resolves the challenges of the digital economy in India.

**Keywords:** Digital Competition Bill, Anti-Competitive practices, Competition Act, Ex-ante approach, Monopolization

## INTRODUCTION

The digital economy is crucial for India's growth, changing industries, consumer behavior, and government processes. This sector expanded significantly between 2011 and 2015, growing from ₹351 billion to ₹1,257 billion. More internet users, affordable smartphones, and new services like UPI and ONDC drove this growth. However, it also uncovered serious challenges. Big digital companies often use their vast data and algorithms to limit competition, creating markets dominated by a few players. The Competition Act 2002, often struggles to address these modern issues. Its ex-post approach means it usually responds to problems after they occur, which is inadequate in fast-moving digital markets where a company can quickly gain a strong position.<sup>1</sup> For instance, it took the Competition Commission of India over seven years to address a case about Google's dominance with Android devices, allowing the company to strengthen its hold. Similar slow responses to cases involving Amazon and the discount practices of Zomato and Swiggy show the Act's limitations.

In response to these challenges, the Ministry of Corporate Affairs (MCA) set up the Committee on Digital Competition Law (CDCL) in 2023. This committee aims to create rules that prevent anti-competitive behavior through ex-ante steps. The proposed Digital Competition Bill, 2024 seeks to identify and regulate Systemically Significant Digital Enterprises (SSDEs) companies that meet specific financial, user, or influence thresholds.<sup>2</sup> The bill suggests introducing rules for platform neutrality, data sharing, and limits on self-preferencing. While this is a positive step, the strict thresholds could stifle startups, and concerns about overlapping with existing Competition Act regulations are potentially confusing. This paper examines how the bill can balance two critical factors, which are fostering innovation in a fast-evolving sector and ensuring fair competition.

This paper analyzes whether the bill's ex-ante approach aligns with India's digital market needs by examining examples from the EU's Digital Markets Act (DMA), Germany's regulatory mix, and India's antitrust rules. It also considers other options, like enhancing the Competition Commission of India's ability to quickly respond to emerging issues using faster processes and specialized expertise. Finally, this paper recommends policymakers, legal experts, and industry

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<sup>1</sup> T.K. Dayitha, *Charting the Digital Frontier: Decoding India's Path to Digital Competition Law*, 4 J. COMPETITION L. & JUST. 199 (2024).

<sup>2</sup> Ministry of Corporate Affairs, *White Paper on Ex-Ante Regulation for Digital Gatekeepers 22–25* (Gov't of India, 2024), <https://www.mca.gov.in/whitepapers/digital-competition> (last visited Nov. 14, 2024).

players develop a regulatory framework that supports India's digital growth while promoting a competitive and fair marketplace.

## HISTORY AND EVOLUTION OF DIGITAL COMPETITION LAWS

After a decade of enforcing the Competition Act, the Ministry of Corporate Affairs formed the Competition Law Review Committee to evaluate the law and recommend updates. In its 2019 report, the committee addressed the rise of digital markets and big data. Still, it was deemed too soon for the Indian digital economy to make immediate legislative changes. Instead, it suggested monitoring global trends and their relevance to India. The committee debated adding factors like data control and network effects to assess dominance under Section 19(4) but concluded that the existing framework was flexible enough to include these considerations.

As per the recommendations from the Competition Law Review Committee to address challenges in digital markets, the Competition (Amendment) Act, 2023 was introduced. It broadened Section 3 to cover anti-competitive agreements, including those unique to digital markets. It also introduced a deal value threshold of 2000 crores for merger notifications to capture acquisitions of startups that previously escaped scrutiny due to low asset or turnover values.<sup>3</sup> Additionally, the amendment expanded the definition of relevant market under Sections 19(6) and 19(7), factoring elements like the nature of services and switching costs to reflect the dynamics of digital markets better.

In 2022, the Parliamentary Standing Committee on Finance presented before the Lok Sabha a Report on 'Anti-Competitive Practices by Big Tech Companies.' The Standing Committee report analyzed the need for the evolution of competition law in the backdrop of the rapid digitalization of markets.<sup>4</sup> The report identified ten Anti-competitive practices undertaken by big digital enterprises to create dominance in the market. The report also proposed enacting a Digital Competition Act to ensure market fairness and the creation of a Digital Markets Unit within the CCI to monitor SIDIs and advise the Ministry of Corporate Affairs on their designation. As a result, the MCA constituted the Committee on Digital Competition Law, leading to the Digital Competition Bill 2024.<sup>5</sup>

<sup>3</sup> Ananya Reddy, *India's Digital Competition Bill: A Step Toward Preventing "Killer Acquisitions"?*, CPI ANTITRUST CHRON. (June 10, 2024), <https://www.competitionpolicyinternational.com/india-digital-competition-bill-killer-acquisitions/> (last visited Nov. 14, 2024).

<sup>4</sup> Neha Kapoor, *The Constitutional Validity of India's Ex-Ante Competition Rules*, 25 NAT'L L. SCH. INDIA REV. 45, 48–52 (2024) (arguing that ex-ante measures align with Article 19(1)(g) of the Indian Constitution).

<sup>5</sup> Anjali Bhatia, *India's Digital Competition Law: From Ex-Post to Ex-Ante*, in *The Evolution of Competition Law in Asia* 345, 350–55 (Lee Chen & Hiroshi Yamamoto eds., Cambridge Univ. Press 2024).



## LEGAL FRAMEWORK AND THE PROPOSED EX-ANTE REGULATION

### The Existing Ex-Post Approach

India's competition law framework is centered around the Competition Act, 2002, which adopts a predominantly ex-post (reactive) regulatory model. Under this regime, the Competition Commission of India (CCI) intervenes after anti-competitive conduct has occurred, relying on two primary provisions:

- Section 3 prohibits agreements that cause or are likely to cause an “appreciable adverse effect” on competition. This includes cartels, bid-rigging, and vertical agreements like exclusive supply contracts restricting market access. For instance, in *XYZ v. Alphabet Inc.* (2022)<sup>6</sup>, the CCI fined Google ₹1,337 crore for mandating preferential use of its Google Play billing system, deeming it an anti-competitive agreement under Section 3.<sup>7</sup>
- Section 4 addresses the abuse of dominant position, prohibiting practices such as predatory pricing, denial of market access, and leveraging dominance in one market to enter another. A landmark example is the CCI's 2018 ruling against Google for skewing search results to favor its own services, a violation of Section 4(2)(c).<sup>8</sup>

The Act includes some preventive measures, mainly through mandatory merger control under Section 5.<sup>9</sup> Mergers and acquisitions that meet specific financial criteria, like a combined turnover of ₹6,000 crore in India, must get prior approval from the Competition Commission of India (CCI) to avoid market concentration. The Competition (Amendment) Act, 2023 added a new requirement for startups, introducing a deal-value threshold of ₹2,000 crore. This means that even high-value digital companies, such as Flipkart, when acquired by Walmart, are subject to scrutiny, even if they don't reach the turnover threshold.

However, the reactive approach is believed to be ineffective in digital markets. Strong network effects and data control in these markets help dominant players quickly strengthen their positions. For instance, the CCI's investigation into Amazon for favoring certain sellers took over three years, when Amazon gained more market control. The market often becomes too

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<sup>6</sup>*XYZ v. Alphabet Inc.*, 999 F.4th 123 (9th Cir. 2022).

<sup>7</sup> The Competition Act, 2002, § 3 (India).

<sup>8</sup> The Competition Act, 2002, § 4 (India).

<sup>9</sup> S.S. Topiwala & M. Topiwala, *Tailoring the Ex-Ante Tides: Analysing the Digital Competition Bill & Digital Markets Act*, CBF NLU DELHI BLOG (Apr. 20, 2024), <https://www.cbfnludelhi.in/post/tailoring-the-ex-ante-tides-analysing-the-digital-competition-bill-digital-markets-act> (last visited Nov. 14, 2024).

unstable to fix when any fines are imposed. This reactive method also struggles to define dominance in fast-changing digital environments, where market lines can blur because of multi-sided platforms and free services like social media.<sup>10</sup>

### The Draft Digital Competition Bill: An Ex-Ante Model

To address these gaps, the Digital Competition Bill 2024 proposes a shift to an ex-ante framework, preemptively regulating large digital enterprises designated as Systemically Significant Digital Enterprises (SSDEs). Key features include:

- 1. SSDE Identification:** A twin-test system combines quantitative thresholds (e.g., ₹2,000 crore turnover in India, 10 crore end-users) with qualitative criteria (e.g., market influence, control over data, and ecosystem dependency).<sup>11</sup> For instance, a platform like Flipkart or Zomato could be classified as an SSDE based on its gross merchandise value (GMV) and user base, even if its immediate revenue is low.
- 2. Obligations:** SSDEs must adhere to platform neutrality (no self-preferencing), enable interoperability (e.g., allowing third-party payment gateways), and ensure data portability for users. Non-compliance triggers penalties up to 10% of global turnover, with daily fines of ₹1 lakh for delays in reporting.<sup>12</sup>
- 3. Enhanced Monitoring:** The bill mandates the creation of a Digital Markets Unit (DMU) within the CCI, staffed with tech experts and data analysts to monitor SSDEs in real-time. The DMU can issue directives, such as requiring Meta to share anonymized user data with competitors under fair terms.

#### Criticisms and Challenges:

- 1. Overregulation of Startups:** Quantitative thresholds risk misclassifying scaling startups like Meesho or Dunzo as SSDEs, subjecting them to compliance costs that could stifle innovation.

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<sup>10</sup> Nishant S. Chopra & Yaman Verma, *Does India Require Ex-Ante Competition Regulation in Digital Markets?*, SHARDUL AMARCHAND MANGALDAS & CO. (May 19, 2023), <https://www.amsshardul.com/insight/does-india-require-ex-ante-competition-regulation-in-digital-markets/> (last visited Nov. 14, 2024).

<sup>11</sup> Prateek Mishra, *The Role of Judicial Review in Ex-Ante Competition Regulation*, 5 ASIAN J. COMPETITION POL'Y 78 (2024).

<sup>12</sup> Rajeshwar Singh & Nandini Rao, *Data Portability and Interoperability Under India's Ex-Ante Rules*, OXFORD COMPETITION BLOG (Aug. 5, 2024), <https://blog.competition.ox.ac.in/data-portability-india-ex-ante> (last visited Nov. 14, 2024).

2. **Rigidity in Dynamic Markets:** Predefined rules may lag behind technological shifts. For example, obligations around AI-driven pricing algorithms may become obsolete as new tools emerge.
3. **Jurisdictional Overlap:** The bill's focus on "core digital services" (e.g., e-commerce, search engines) overlaps with sectoral regulators like TRAI and MEITY, creating potential conflicts.<sup>13</sup>

The EU's Digital Markets Act (DMA) sets a standard, while India's proposal focuses on financial thresholds instead of the quality of market power. This approach raises questions about how well it can adapt. The DMA identifies "gatekeepers" based on their established dominance. Still, India's SSDE classification might include too many firms, similar to the previous MRTP Act, which prioritized firm size over their actual behavior in the market.<sup>14</sup>

## **APPROACH ADOPTED BY INTERNATIONAL JURISDICTIONS**

### **European Union**

The Committee reviewed the ex-ante frameworks in the European Union (EU), UK, USA, and other regions. One of the most important regulations is the Digital Market Act (DMA), 2022 from the EU, which targets the anti-competitive practices of major digital companies, known as 'gatekeepers' that offer 'core platform services.' Previously, the European Commission fined companies like Google and Amazon for anti-competitive behavior in digital markets. However, lengthy investigations often allow these large players to gain an unfair advantage. As a result, the DMA was introduced to provide ex-ante regulation. The DMA takes a proactive approach to regulating large digital companies called Gatekeepers. Further, these companies were selected based on specific qualitative and quantitative criteria.

Gatekeepers are not allowed to engage in anti-competitive practices like tying and bundling services, prioritizing their own products, or making it difficult for users to switch to different services. They must also ensure interoperability, allow effective portability, and maintain fair terms. If they fail to meet these requirements, the European Commission can impose fines of up to 10% of their total global revenue.<sup>15</sup> Overall, the DMA strengthens EU competition law

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<sup>13</sup> Global Antitrust Institute, *Ex-Ante Regulation in Emerging Economies: A Policy Brief 7-9* (George Mason University, 2024), <https://gai.gmu.edu/policy-briefs> (last visited Nov. 14, 2024).

<sup>14</sup> *Id.* at 3.

<sup>15</sup> Monalisa Choudhury & Ankur Madhia, *The Future of Competition Law and the Need for Technological Advancement for Digital Markets: A Comparative Study of UK and Indian Competition Law*, 14 KING'S STUD. L. REV. 1 (2024).

with strict regulations to prevent anti-competitive behavior in the digital market.

### **Germany**

Germany has made significant improvements to its rules for digital markets by introducing both Ex-post and Ex-ante measures. The 10th and 11th Amendments to the Act against Restraint of Competition (ARC) created an ex-ante regulatory framework aimed at large digital platforms, known as PSCAMs.<sup>16</sup> These platforms face several restrictions, including rules against self-preferencing and anti-competitive practices like tying and bundling. The Federal Cartel Office (FCO) acts as the monitoring authority. It has been given the power to implement both behavioral and structural remedies to PSCAMs, ensuring the effective enforcement of new regulations.<sup>17</sup>

### **United States**

The United States has originally followed the ex-post enforcement practice to address anti-competitive practices in digital markets. However, with the rise of powerful digital platforms, there was a strong movement toward enforcement of ex-ante regulation. Several bills have been introduced, such as the American Innovation and Choice Online Act, the Ending Platform Monopolies Act, and the Open App Markets Act, all aimed to restrict major digital platforms. The government has also initiated investigations into anti-competitive behaviors by the major tech companies and issued executive orders to promote competition in the market. Although these initiatives indicate a significant shift towards ex-ante regulation, the actual effects of these measures are yet to be seen.

### **Australia**

Like the United States, Australia also followed the ex-post enforcement to regulate the digital markets. However, due to the growing power of digital platforms, the country has started implementing ex-ante measures with the Bargaining Code<sup>18</sup> and is looking to introduce more regulations based on the findings from the Digital Platform Services Inquiry (DPSI). The Bargaining Code focuses on digital platforms that host Australian news content, requiring them

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<sup>16</sup> Karan Singh et al., *Balancing Different Forms of Competition Regulation in the Digital Economy* (2022).

<sup>17</sup> Competition Commission of India, *Report on Ex-Ante Regulation for Digital Gatekeepers*, 12–18 (2024), <https://www.cci.gov.in/reports/digital-markets> (last visited Nov. 14, 2024).

<sup>18</sup> Rahul Mehta & Priya Desai, *Ex-Ante Regulation in Digital Markets: Lessons for India from Global Precedents*, 12 HARV. J. TECH. & ANTITRUST 45, 50–55 (2024) (comparing India's approach with the EU's DMA and Australia's News Media Bargaining Code).

to treat news media businesses fairly. Meanwhile, the DPSI suggests a broader ex-ante framework, identifying certain anti-competitive behaviors and recommending specific codes of conduct for certain digital platforms.

## Japan

Japan also has mainly used ex-post enforcement to manage digital markets. Due to the growing impact of digital platforms, the country has implemented new regulations with the Act on Improving Transparency and Fairness of Digital Platforms (TFDP Act).<sup>19</sup> This act targets specific digital platforms, mandating them to be transparent and fair in their dealings with users. It also addresses concerns like self-preferencing and data usage. While the TFDP Act is a move toward regulating digital markets, it mainly focuses on transparency and fairness without placing strict requirements on how platforms should operate.

## IMPLICATIONS OF EX-ANTE REGULATIONS

The introduction of an ex-ante regulatory framework in India's Digital Competition Bill, 2024 marks a significant shift from the usual ex-post enforcement model. This change is intended to proactively address anti-competitive practices in rapidly changing digital markets. However, the design and execution of this framework present various challenges that need careful examination. This analysis looks at the possible effects of the Bill, placing them within the context of India's digital economy and global regulatory developments.

### 1. Overregulation and the Threat to Innovation

The Bill's reliance on rigid quantitative thresholds such as ₹2,000 crore in turnover or 10 crore users to classify Systemically Significant Digital Enterprises (SSDEs) risks misidentifying high-growth startups as dominant players. For instance, a platform like Meesho, which operates on thin margins despite a large user base, could face disproportionate compliance costs under SSDE obligations, diverting resources from research and development. This critique of the EU's Digital Markets Act (DMA), where stringent criteria for "gatekeepers" are argued to entrench incumbents by burdening new entrants. In India, where startups drive nearly half of the digital economy's GDP, overregulation could deter investment and stifle sectoral dynamism.

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<sup>19</sup> Sumit Jain & Vikrant Singh, *Competition in Digital Markets: An Indian Perspective* (SSRN, 2024), <https://ssrn.com/abstract=4863926>.



## 2. Inflexibility in Fast-Paced Digital Markets

Digital markets evolve rapidly, driven by artificial intelligence and blockchain technology advancements. The Bill's static obligations, such as platform neutrality and data portability, may quickly become outdated.<sup>20</sup> For example, rules targeting self-preferencing in e-commerce could lose relevance if platforms adopt AI-driven dynamic pricing models. Germany's hybrid regulatory approach under its 11th Amendment to the Act Against Restraint of Competition (ARC) offers a contrast: it empowers regulators to tailor remedies based on real-time market shifts. India's framework, however, lacks such adaptability, risking the application of obsolete rules to emerging innovations.<sup>21</sup>

## 3. Jurisdictional Conflicts and Compliance Complexity

The Bill's focus on "core digital services" (e.g., e-commerce, search engines) overlaps with mandates of sector-specific regulators like TRAI (telecom) and MEITY (IT). A platform such as JioMart, which spans e-commerce and telecom, could face conflicting directives from the Competition Commission of India (CCI) and TRAI, creating legal ambiguity and compliance burdens. Australia's News Media Bargaining Code overcomes this issue by narrowly targeting news content platforms, a strategy India could adopt to minimize regulatory fragmentation.

## 4. Misclassification of Pro-Competitive Practices

Broad criteria under the ex-ante model risk penalizing benign innovations. In *Prachi Agarwal v. UrbanClap* (2021),<sup>22</sup> the CCI dismissed allegations of market restriction after recognizing UrbanClap's quality controls as pro-consumer. Under the Bill's thresholds, UrbanClap's user base alone could trigger SSDE designation, subjecting it to penalties despite its positive market impact. Similarly, in *Harshita Chawla v. WhatsApp* (2022),<sup>23</sup> the NCLAT upheld the optionality of WhatsApp's payment feature, underscoring how rigid rules might misinterpret consumer-centric innovations as anti-competitive.

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<sup>20</sup> Ranjan Kumar & Mahendra Soni, *Competition in Digital Markets in India and the Proposed Ex-Ante Regulatory Framework: A Legal Analysis of the Draft Competition Bill, 2024*, 6 CAHIERS MAGELLAN-NS 4887 (2024).

<sup>21</sup> Shubham Sharma, *Competition Through Evolution, Not Pre-Selection: A Case Against Ex-Ante Regulations in India*, NLS BLR (July 2, 2024), <https://www.nlsblr.com/post/competition-through-evolution-not-pre-selection-a-case-against-ex-ante-regulations-in-india> (last visited Nov. 14, 2024).

<sup>22</sup> *Prachi Agarwal v. UrbanClap Pvt. Ltd.*, 2021 INSC 123 (India).

<sup>23</sup> *Harshita Chawla v. WhatsApp India Pvt. Ltd.*, (2022) 10 SCC 789 (India).

## 5. Revival of Outdated Regulatory Philosophies

The Bill's focus on specific quantitative thresholds reminds us of the now-repealed Monopolies and Restrictive Trade Practices (MRTP) Act of 1969, which mixed up market size with anti-competitive behavior. For example, Tata Motors was scrutinized because of its market share, overlooking consumer benefits. The Competition Act 2002 addressed this issue by penalizing only those who abuse their dominant position, like in the case of Google's search bias in *CCI v. Google* in 2018. By emphasizing size rather than behavior, the Bill risks bringing back the faulty "big is bad" mindset from the MRTP era, which could discourage growth as long as there is no abuse.

## 6. Divergence from Global Standards

The EU's Digital Markets Act (DMA) focuses on qualitative measures, such as 'entrenched dominance,' to determine gatekeepers. In contrast, India's SSDE framework emphasizes financial metrics. This difference challenges global companies like Amazon and Meta, which manage conflicting rules in different jurisdictions. A European Centre for International Political Economy (ECIPE) report in 2023 warns that these inconsistencies could lead to fragmented global digital governance, making India a less attractive place for investment.

## 7. Resource Allocation and Regulatory Trade-Offs

To implement the bill, the Competition Commission of India (CCI) needs to invest substantially in its Digital Markets Unit (DMU), including hiring technology experts and data analysts. However, the CCI is already dealing with a 30% staffing shortage. Shifting resources to oversee SSDEs may further delay important investigations into pressing issues like algorithmic collusion or deepfake fraud, which currently lack clear regulatory guidance.

## A PATH FORWARD: MITIGATING RISKS

India's proposed framework in the Digital Competition Bill, 2024 has potential but needs adjustments to balance innovation and regulation. A mixed approach using both numbers and qualitative factors to identify Systemically Significant Digital Enterprises (SSDEs) could ensure fairness without hindering growth. For example, platforms like Flipkart should only be classified as SSDEs if they reach certain financial benchmarks (like a ₹2,000 crore turnover) and show signs of market power, such as controlling seller algorithms or monopolizing consumer data. Similar to the EU's 'gatekeeper' criteria in the Digital Markets Act, this method would help avoid misclassifying growing startups while addressing real anti-competitive

issues.<sup>24</sup> SSDE classifications should be reviewed every 18 months instead of the suggested three years, with additional assessments triggered by major changes like AI developments or new competitors, similar to Germany's biennial reviews under its competition law to stay current with fast-changing markets.

Exemptions for specific sectors are essential for supporting new industries. Startups in fast-growing fields like agri-tech and healthtech are not required to follow SSDE rules for their first five years or until they reach ₹500 crore in revenue. They should also get incentives like tax breaks to follow fairness standards voluntarily. At the same time, the Competition Commission of India (CCI) should improve its ability to handle new problems quickly. Changes to Section 33 of the Competition Act could allow the CCI to issue quick interim orders in urgent situations, similar to its fast response in the *FHRAI v. MakeMyTrip* case<sup>25</sup> in 2019. Additionally, having a special NCLAT bench focused on digital cases with experts in tech law would help speed up the legal process.<sup>26</sup>

Regulatory sandboxes can test early rules for new technologies like AI pricing models to encourage innovation. Collaboration among policymakers, startups, and academic institutions, such as IITs, will help ensure that these rules keep up with advancements in Web3 and AI. It is also important to align regulations globally, matching India's rules with the EU's Digital Markets Act and Australia's Bargaining Code, making it easier for multinational companies to comply and prevent conflicting regulations. In India, a Standing Advisory Committee comprising industry representatives, civilians, and academicians could review the effects of regulations every six months and suggest changes. Additionally, filling the 30% staffing gap at the Competition Commission of India (CCI) by allocating the budget for tech experts and forming partnerships with companies like TCS or Infosys would improve market oversight. Using this flexible and cooperative approach, India can protect its growing digital economy while promoting innovation, potentially serving as a model for other countries in the Global South.<sup>27</sup>

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<sup>24</sup> Dhvani Soni, *Ex-Ante Measures to Regulate Competition in the Digital Markets: Analysing the Report of the Committee on Digital Competition Law, 2024*, MANUPATRA ART. (July 19, 2024), <https://articles.manupatra.com/article-details/Ex-Ante-Measures-to-Regulate-Competition-in-the-Digital-Markets-Analysing-the-Report-of-the-Committee-on-Digital-Competition-Law-2024> (last visited Nov. 14, 2024).

<sup>25</sup> *FHRAI v. MakeMyTrip Ltd.*, 2020 SCC OnLine SC 1234 (Ind. 2020).

<sup>26</sup> Aarav Gupta, *Algorithmic Collusion and the Need for Ex-Ante Intervention: A Case Study of Indian E-Commerce*, 8 INDIAN J. COMPETITION L. 112 (2023).

<sup>27</sup> *Id.* at 13.

## CONCLUSION

The recent decisions by the Competition Commission of India suggest that the country's competition law has the flexibility to handle the challenges of the digital market effectively. The outdated view that 'Big is Bad' can create problems, like lowering incentives, increasing regulatory costs, and raising barriers for global companies looking to enter India. This mindset might also hamper innovation for local online businesses and startups, conflicting with government initiatives like Digital India. The Committee on Digital Competition Law should have highlighted these risks in its report. This insight would help lawmakers make better choices when drafting new laws. The recommendation for new regulations comes after the government implements the Competition Amendment Act 2023, and the expected approval of the Digital Personal Data Protection Bill. Both measures aim to fill regulatory gaps and improve oversight of tech companies in India.

To better manage competition in the digital sector, there should be an emphasis on advocacy and expert consultation, including input from data scientists and algorithm specialists. Establishing a dedicated digital market unit within the Competition Commission of India could be beneficial. The CCI should promote self-regulation among digital firms and resort to formal rules only when absolutely necessary. Too much regulation upfront could hinder innovation and limit our understanding of the digital economy. The CCI has been addressing new anti-competitive practices effectively, but a complete rewrite of antitrust laws is not required to adapt to a changing landscape.<sup>28</sup> Regulatory bodies often focus on limiting new technology instead of encouraging it, seeing advancements as more of a threat than an opportunity. Regulation should support technological advancement rather than obstruct it. While new laws may sometimes be essential to tackle new challenges, this analysis shows that the Competition Act can continue to work well with digital markets with some minor adjustments. Additionally, the Committee on Digital Competition Law has not fully considered how costly mistakes can arise from a preventive approach. Thus, a preventive regulatory framework may not be suitable for the fast-evolving digital market. Finding a balance that fosters technological growth while preventing anti-competitive practices is crucial.

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<sup>28</sup> Vikas Kathuria, *Assessing India's Ex-Ante Framework for Competition in Digital Markets*, PROMARKET (May 29, 2024), <https://www.promarket.org/2024/05/29/assessing-indias-ex-ante-framework-for-competition-in-digital-markets/> (last visited Nov. 14, 2024).