INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

ISSN: 2582-6433

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ISSN: 2582-6433

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ISSN: 2582-6433

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ISSN: 2582-6433

ASSESSING THE CCI'S METHODOLOGY IN DIGITAL ABUSE OF DOMINANCE CASES: A COMPARATIVE ANALYSIS AGAINST GLOBAL COMPETITION STANDARDS

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Abstract

The Competition Commission of India (CCI) is currently facing a significant legal challenge as it seeks to interpret and apply competition law in the context of a digital economy that is rapidly gaining momentum in India and is no longer dependent on price alone for its power, but on network effects, data concentration and user lock-in. This paper explores how the CCI has interpreted relevant markets and the assessment of dominance in pivotal digital cases such as Google's Android ecosystem, Play Store billing practices, and Meta/WhatsApp's privacy policy. It compares the approach of the CCI to the European Union, the United States, the United Kingdom, Brazil and South Africa competition regimes. The study concludes that the CCI has been successful in adjusting to the digital market realities, but there is a need for improvement in certain aspects such as the lack of an effective ex-post enforcement regime, multi-sided platforms, and zero-price markets. It suggests focused legal and institutional reforms to strengthen India's digital competition framework.

Keywords: *Abuse of Dominance; Digital Markets; Competition Commission of India; Ex-post enforcement, zero-price markets, digital competition framework.*

I. Introduction

A new economic power has surfaced in the twenty-first century. Digital platforms are businesses that bring users, businesses and content together through technology facilitated intermediaries that have emerged from small beginnings to become among the most valuable and influential businesses in human history. Google dominates more than 90% of the search engine market. Meta reaches more than three billion people through its family of social

ISSN: 2582-6433

networking applications. Together Apple and Google control the global mobile operating system ecosystem and what apps can and cannot have access to the smartphone user and on what conditions. The power to control a large share of the market by a few tech companies is not just a commercial issue, but a legal and regulatory one. The study of this problem is especially interesting in the context of India. India is home to more than 900 million internet users, has one of the world's fastest-growing digital economies and is also one of the largest testing grounds for policy in response to the dominance of Big Tech[1]. Google Search, Google Maps and YouTube are daily necessities for Indian consumers. The Google Play Store and Apple App Store are the major distribution channels for Indian businesses. These platforms are important for competition, innovation, and consumer welfare, both in terms of their scale and their dependence. The Competition Act, 2002, under the Competition Commission of India is the key law in India for combating anti-competitive behaviour. The Act bans abuse of a dominant position in the relevant market (section 4). The landmark Google Android order of 2022 imposing Rs. Raised a total sum of 1,337.76 crore and the Google Play Store order of Rs. It was a testament to the ambition of India's competition regulator, and its constraint of ex post enforcement[2]. It poses a specific question: is the CCI's methodology suitable to analyse relevant markets and dominance in digital markets, compared to the methodologies of the EU, USA, UK, Brazil and South Africa? Section II provides a doctrinal framework, in accordance with Section 4. In Section III, the CCI's methodology is explored in three high profile digital cases. In Section IV, methodology is compared to the five comparator jurisdictions. Part V outlines gaps and recommendations for changes.

II. The Doctrinal Framework: Section 4 and the Challenges of Digital Markets

A. Section 4 and the Closed-List Structure

There is no part of the Competition Act that is more succinct than Section 4(1) (no enterprise or group shall abuse its dominant position). Under Section 4(2), there are five elements of abusive conduct, namely: (a)(i) imposing unfair or discriminatory conditions; (a)(ii) predatory pricing; (b)(i) limiting production; (b)(ii) limiting technical and scientific development; (c) denying market access; (d) making contracts subject to supplementary obligations; (e) using dominant position in one market to enter or protect another market. This is a closed list compared to Article 102 TFEU, which is not exhaustive. The factors mentioned in Section 19(4) are considered for determining the dominance such as market share, entry barrier, vertical

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integration, and consumer dependence[3]. The closed nature of Section 4(2) has been a subject of much scholarly debate. It offers legal security on the other, enterprises know which categories are prohibited and how to act in a manner that would prevent such a prohibition. It could, however, also deprive the CCI of a statutory mandate to deal with fresh types of digital abuse that fall outside of the listed categories. The CCI's developing jurisprudence shows that there is considerable analytical stretching necessary to bring pre-digital categories to a platform context[4].

B. Relevant Market Definition in Digital Contexts

Dominance is not measured in general, but only in a specific market in competition law. The usual method used for determining the relevance of a product market is the hypothetical monopolist test (SSNIP test): would consumers switch to substitutes in large enough numbers to make a small, significant and non-transitory price increase unprofitable? According to the definition of India Competition Act, 2002, relevant product market has been defined in Section 2(t) and relevant geographic market in Section 2(s) of the Act with the assessment factors provided in Section 19(6) and 19(7) respectively[5]. The definition of a relevant market in digital markets is hampered by at least four challenges. First, the zero-priced problem: there are a lot of digital services that have no price on their own, and don't really fit the SSNIP test. The proposed 'small but significant non-transitory decrease in quality' test (SSNDQ) is offered as an alternative[6]. Secondly, multi-sided platforms meet the needs of multiple customers whose needs are interconnected[7]. Third, the dynamic nature of digital markets can render platforms boundaries unstable, as platforms can 'flatten' by using the process of 'platform envelopment'. Fourth, data is a competitive asset, and barriers to entry are not easy to see in traditional[8] market analysis.

C. Dominance in Digital Markets: Network Effects, Data, and Lock-In

It is important to shift one's perspective from traditional competition analysis to understand dominant position in digital markets. The network effect is the most fundamental aspect of digital markets. The network effect is an effect that happens when the usefulness that a user gets from a product or service depends upon the number of other users. Digital platform markets are characterized by scale, velocity and durability of network effects, and by their potential to lock out all the remaining competitors. Direct network effects are those that occur when users on a particular platform benefit from others' participation on that platform[9].

The most evident one is WhatsApp. An Indian user will pick the messaging app that their

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family, colleagues and social network prefer to use. No matter what improvements engineers make, the user will not switch to another app when all important contacts are already on WhatsApp. Indirect network effects are those that exist between the sides of a platform: When more people search on Google, the more data and more click signals they can provide advertisers, and this creates a never-ending flywheel effect with no natural balance[10]. The CCI's 2020 Market Study on E-Commerce marked a first[11] in the application of the analytical tools for competition analysis of digital markets since it identified the notable characteristics of these markets, network effects, data barriers, and platform dependence that were not previously well understood through traditional industry analysis.

III. The CCI's Methodology in Practice: Three Case Studies

A. Google Android: CCI Case No. 39 of 2018

1. Background and Market Definition

The Google Android case is the biggest abuse of dominance judgement in the Indian competition law arena. On 28 August 2018, Umar Javeed, Sukarma Thapar, and Aaqib Javeed filed the complaint, stating that Google LLC and Google India Private Limited engaged in contractual restrictions on original equipment manufacturers (OEMs) in India that were unfair and unreasonable and constituted an abuse of their dominant position in the Indian mobile device market. To access the Google Play Store, OEMs had to sign the Mobile Application Distribution Agreement (MADA) which required them to install the full Android Mobile Services (GMS) suite, the Anti-Fragmentation Agreement (AFA) and the Android Compatibility Commitment (ACC), which prevented development of Android forks, and Revenue Sharing Agreements (RSA) that offered financial incentives for Google Search exclusivity[12].

The CCI defined five relevant markets, all with India as the geographic market: (i) licensable OS for smart mobile devices; (ii) app stores for Android smart mobile OS; (iii) general web search services; (iv) non-OS-specific mobile web browsers; and (v) online video hosting platforms. The granular, service-by-service approach – not grouping together the various activities of the platform as a single ‘mobile ecosystem' market – makes analytical sense because it allows for a clear identification of the choke point through which the leverage is applied – the Play Store as the gateway to the entire GMS bundle[13].

2. Dominance and Abuse Findings

Google has been identified dominating all five markets, and as much as 98 percent of the Android OS market. The CCI spotted that the following provisions were in violation of the

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rules: Section 4(2)(a)(i) – imposing unfair pre-installation conditions through MADA; Section 4(2)(b)(ii) – restricting technical development by banning the Android forks; Section 4(2)(c) – denying market access to competitor search apps through RSA exclusivity; Section 4(2)(d) – imposing supplementary obligations through GMS bundling; and Section 4(2)(e) – using the dominance of Play Store to ensure market position in search, browser, and video markets[14].

The CCI's examination of the anti-competitive nature of MADA was very detailed. Google had effectively tied individual applications to a bundled arrangement with no legitimate commercial reason for requiring OEMs to pre-install the entire GMS suite as a condition of Play Store access, the Commission found. The AFA and ACC ensured that there was no other Android ecosystem that could develop. The RSA gave financial incentives to OEMs who used Google Search as the default search engine[15].

The CCI fined the company, the amount of which was not revealed. 1,337.76 crore was issued and extensive behavioural remedies were given. The NCLAT affirmed all the charges of dominance and abuse and also confirmed the entire fine but deleted four conditions of the remediation directions and accepted Google's stance that Section 4 calls for an effects based analysis, which is still in contention before the Supreme Court[16].

B. Google Play Store Billing: CCI Case No. 07 of 2020

The Play Store billing case is about the fact that Google demands all app developers who sell paid apps on the Play Store to use Google Play Billing (GPB) instead, and pay a service fee of up to 30% on all sales. The CCI determined that this constitutes (a) an unfair condition under Section 4(2)(a)(i) (that is, the condition must be mandatory, with no alternative option available);

(b) an excessive fee in violation of Section 4(2)(b) (that is, the fee is an exploitative abuse of the dominant position); (c) an anti-steering provision under Section 4(2)(d) (that is, developers are forbidden from informing users of cheaper external options); and (d) leveraging of the dominant position of Play Store into the adjacent market for in-app payment processing under Section 4(2)(e). A penalty of Rs. 936.44 crore was imposed[17].

One of the CCI's most analytically ambitious claims is its finding of exploitative abuse in the digital context. The exploitative abuse doctrine, which condemns a dominant company for directly abusing consumers through unfair prices or conditions, without any requirement to show foreclosure of competition, has been used historically in regulated infrastructure sectors. It was new to the marketplace commission rate in a digital marketplace. The CCI equated the commission to a toll-road monopoly as a monopoly provider of access infrastructure can levy

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supra-competitive tolls as users have no other way to go[18].

C. Meta/WhatsApp Privacy Policy: Suo Motu Case No. 01 of 2021

1. Procedural History and Jurisdictional Significance

On 4 January 2021, WhatsApp LLC released a revised privacy policy that stipulates that all data be transferred to the family of companies to which Meta belongs, or the account would be deleted: If users do not agree by 15 May 2021, then their accounts would be deleted. The CCI, in a rare exercise of its suo motu powers, took cognisance of the case on 24 March 2021 indicating the public importance[19].

Before the Delhi High Court, WhatsApp challenged the authority of the CCI, arguing that it was a data protection law issue. In November 2022, the Supreme Court reiterated the CCI's jurisdiction on competition law issues and held that a potential privacy issue could not be a bar to the CCI considering conduct of the nature of an abuse of dominant position. This put a foundation for the overlapping, but distinct, regulatory powers[20] of competition law and data protection law.

2. Abuse Findings and Jurisprudential Significance

CCI determined the relevant market as Over-The-Top (OTT) messaging services in India, where WhatsApp enjoys a dominant position with about 500 million users as of the time of CCI's investigation. But the dominance was not just based on market share, it was the network effect that had entrenched WhatsApp's position relatively as a messaging platform for almost every Indian smartphone user with a data connection – it was nearly impossible[21] to switch to another messaging platform.

The CCI found three types of abuse: firstly, take-it-or-leave-it policy, under which WhatsApp imposed conditions that it believed were fair, but in reality, were not; secondly, denial of market access, with the CCI finding that forcing other advertising platforms to share data with Meta's advertising platform created entry barriers for competing advertising platforms that could not access the same behavioural data; and thirdly, leveraging, where the CCI found that the messaging dominance of WhatsApp was used to protect the position of Meta's advertising platform in on-line display advertising[22].

This is the most jurisprudentially innovative CCI order of the digital era, the order of the Meta/WhatsApp. It is the first case in India to expressly declare privacy as a non-price competition parameter, and in zero-price markets, quality of data protection is as crucial a competition parameter as is price in the traditional markets. It is also the first case which establishes simultaneous violation of both the rights to privacy and competition from a single

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set of facts, bringing India in sync with EU and Germany on the privacy-competition interface. In January 2025, Meta and WhatsApp appealed to the Supreme Court[23].

IV. Comparative Benchmarking: Five Jurisdictions

A. The European Union

The EU's cornerstone anti-abuse rule is Article 102 TFEU, which prevents any abuse by a dominant undertaking in so far as this could influence trade between the EU Member States. The examples of abusive conduct provided in Article 102 are not closed, like the list in Section 4(2) of the Indian Act, but are drafted in a way that leaves room for the European Commission to build up case law on new types of digital abuse. The EU's enforcement resulted in three key Google decisions: Google Shopping (2017, €2.42 billion) – self-preferencing is an abuse; Google Android (2018, €4.34 billion) – OEM tying and anti-fragmentation agreements are the same; Google AdSense (2019, €1.49 billion). In September 2024[24], the CJEU confirmed the Google Shopping ruling.

The Digital Markets Act (Regulation (EU) 2022/1925), which will be fully in effect from 2 May 2023, marks the EU's evolution towards a hybrid approach – one that includes both Article 102 enforcement and prospective ex-ante obligations for designated 'gatekeepers'. Gatekeepers are undertakings that offer key platform services that satisfy quantitative criteria: annual turnover of at least €7.5 billion in the EU, market capitalisation of at least €75 billion, 45 million end users of the service per month and 10,000 business users[25] of the service per year. In April 2025, Commission made its first DMA enforcement fines, with a €500 million penalty for Apple on anti-steering violations[26] on the App Store.

The CCI's theory of Facebook abusing its dominant position by using third-party website data with Facebook user data without meaningful consent is similar to that of the German Federal Cartel Office's (Bundeskartellamt) Facebook/Bundeskartellamt decision (2019). In July 2023, CJEU ruled that the violation of data protection can be a part of the element of abuse of dominance analysis under Article 102, formally bridging the privacy-competition gap that the CCI had already intuited in its WhatsApp order.[27]

B. The United States

The United States' primary instrument is Section 2 of the Sherman Antitrust Act, 1890, which prohibits monopolisation, requiring proof of monopoly power in a relevant market and wilful acquisition or maintenance of that power through improper conduct. The consumer welfare standard, focused primarily on price effects, means that non-price harms in zero-price digital

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markets are poorly captured by the US framework.[28]

Judge Amit Mehta's judgment of 5 August 2024 in United States v. Google LLC is the most significant antitrust ruling in the United States since United States v. Microsoft Corporation (2001). The court found that Google had violated Section 2 by unlawfully maintaining monopoly power in the markets for general search services and general search text advertising through exclusive distribution agreements, most prominently the approximately $20 billion annual payment to Apple to be set as the default search engine on all Apple devices. The remedies decision of September 2025 prohibited exclusive search distribution contracts, required sharing of search index and user-interaction data with rivals, and barred Google from replicating the same tactics in generative AI.[29]

A separate DOJ action addressing Google's advertising technology practices resulted in a judgment of 17 April 2025 finding Google liable for unlawful monopolisation of the publisher ad server and ad exchange markets- an unprecedented dual monopolisation finding against a single company in two distinct markets.[30]

C. The United Kingdom

Chapter II of the Competition Act 1998 (based on Article 102 TFEU) is the UK's main anti-abuse of dominance provision. The Digital Markets, Competition and Consumers Act 2024 (DMCCA) has introduced a new ex-ante Strategic Market Status (SMS) regime which applies from 1 January 2025. The SMS regime will define firms whose market power is significant and entrenched in a digital activity over the five-year period forward and who occupies a strategic position. Turnover thresholds are £25 billion globally or £1 billion UK turnover[31].

CMA's inaugural SMS investigation took place on 14 January 2025. Google and Apple were labeled SMS companies in regard to their mobile platforms[32] by October 2025. The speed of the UK's SMS regime (from Royal Assent in May 2024 to first designations within 12 months) contrasts with the slow pace of the ex-post regime in India. The EU DMA might seem more informative for India than the DMCA, since the latter contains the new ex-ante regime within the existing competition authority, rather than establishing a new body.

D. Brazil

The main competition law in Brazil is Law No. 12,529/2011, which created the Conselho Administrativo de Defesa Econômica (CADE), a unified competition authority. Under Article 36, the definition of 'prejudicial acts to free competition' is quite wide, and the presumption of dominance is rebutted at market shares as low as 20%, which is lower than the market shares

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in other jurisdictions[33].

CADE's experience with digital markets enforcement has brought to light the shortcomings of an ex-post system. The Google Shopping case in Brazil was tied in front of the commissioners, with the president voting against a violation due to a lack of evidence, and no violations were recorded despite the same behaviour that led to a €2.42 billion fine. fine in the EU. This result dramatically demonstrates the increased evidentiary standard required to enforce cases ex post[34].

In September 2025, the Brazilian government presented the Fair Competition Act for Digital Markets (Bill 4675-2025) to Congress. The Bill establishes an 'economic agents of systemic relevance' designation, which is similar to the EU's designation of a gatekeeper, and requires quantitative and qualitative factors to be taken into account, such as market power, network effects, vertical integration, and data control. Most importantly, the burden of proof must be borne by the designated platforms in order to justify practices that are disputed, and fines can be up to 20% of gross operating revenues[35].

E. South Africa

South Africa's competition framework is governed by the Competition Act 89 of 1998, significantly strengthened by the Competition Amendment Act, 2019. The 2019 Amendment introduced a broad market inquiry power under Section 43B, which enables the Competition Commission of South Africa (CCSA) to investigate market features impeding competition, going beyond case-specific enforcement. The Amendment also introduced provisions protecting the economic participation of historically disadvantaged persons which is a social equity and fairness dimension in competition law with no direct parallel in the EU, US, or UK frameworks.[36]

The Online Intermediation Platforms Market Inquiry (OIPMI), formally initiated on 19 May 2021, is the most significant digital competition enforcement action in South Africa. The CCSA published its final report on 31 July 2023, containing binding remedial actions against Google, Apple, Booking.com, Takealot, Uber Eats, and a range of local platforms. Against Google, the CCSA found systematic self-preferencing in Search and ordered its cessation. Against both app stores, the CCSA found that commission rates of up to 30% were excessive and anti-steering restrictions were anticompetitive.[37]

South Africa's OIPMI demonstrates the feasibility of a 'Brussels Effect' strategy: India can gauge SSDE obligations at DMA-equivalent standards to leverage EU regulatory investment without equivalent institutional resources.[38] The market inquiry model, sector-wide

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investigation with binding remedial powers completed in approximately two years, is significantly more efficient than case-specific enforcement for structural platform competition problems.[39]

F. Consolidated Comparative Table

Table 1: CCI Methodology Compared — Five Jurisdictions

Criterion	EU	USA	UK	Brazil	South Africa	India (CCI)
Legal basis	Art. 102 TFEU + DMA 2022	Sherman Act §2	Competition Act 1998 + DMCCA 2024	Law 12,529/2011; Bill 4675-2025 (proposed)	Competition Act 89/1998 (as amended 2019)	Competition Act 2002 (S.4)
Enforcement model	Ex-ante + ex-post	Ex-post only	Ex-ante (SMS) + ex-post	Ex-post; moving to ex-ante	Market inquiry + ex-post	Ex-post only
Zero-price market definition	SSNDQ test + case law	Consumer welfare std. (price-focused)	CMA qualitative approach	Conduct-based; no SSNDQ rule	Sector inquiry — bypasses SSNIP	SSNIP adapted; gaps remain
Dominance threshold	Flexible substantial market power	Monopoly power standard	Substantial, entrenched power (5-year basis)	Rebuttable presumption at 20% share	Case-by-case + inquiry powers	Section 19(4) factors; no fixed threshold
Privacy as competition param.	Yes- CJEU C-252/21 (2023)	Not recognised	Emerging	Not explicitly recognised	Not explicitly recognised	Yes — WhatsApp Order 2024

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Criterion	EU	USA	UK	Brazil	South Africa	India (CCI)
Self-preferencing addressed	Yes - DMA Art. 6(5)	Partial-Google ruling 2024	Yes-conduct requirement	Not resolved (tied vote)	Yes-OIPMI 2023	Yes - S.4(2)(e)
Ex-ante obligations	Yes — DMA gatekeepers	None	Yes-SMS firms (DMCCA)	Proposed (2025 Bill)	Market inquiry (binding)	Not yet enacted
Burden of proof	Platform justifies under DMA	DOJ bears full burden	CMA assesses; platform may rebut	Shifted to platform (proposed)	Inquiry — shared	CCI bears full burden

V. Gaps, Critique, and Recommendations

A. Methodological Gaps

The first problem is the definition of the "zero" price market. The CCI has not clearly expressed any alternative doctrine to SSNIP test for zero price services. For WhatsApp, the market was simply identified as the OTT messaging services, and there was no systematic analysis of substitutability between the various messaging services. This is not the case for the EU, which has applied the SSNDQ test with increasing doctrinal rigour. CCI must formalise and implement a quality-based definition of a market for Indian[40] use.

Second, the multi-sided platform issue. The CCI's methodology of market definition in multi-sided platforms, most starkly in Google Android, creates separate markets for each side rather than completely theorising the interdependencies of the sides and how leverage[41] is applied to them.

Thirdly, the controversy over effects-based analysis. The NCLAT's reasoning of imposing the effects-based requirement in Section 4 of the Google Android appeal is contrary to the statutory language, the consistent position of the CCI and the clear finding of the Competition Law Review Committee[42] that such a requirement is to be excluded from the statute. This is still unresolved until the Supreme Court clarifies it. The decision in favour of effects-based analysis would make India's approach closer to that of the US Sherman Act, and would significantly add to the enforcement burden on CCI.

Fourth, the time lag of ex post enforcement. It was filed in 2018, ordered in 2022 and appealed

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in 2025, spanning almost seven years in which Google's dominance in the Android ecosystem grew unchecked. The gap in time between South Africa's OIPMI (2 years for a sector-wide investigation) and the UK's SMS (12 months from Royal Assent to first designation), and India's ex-post framework, is structurally incompatible with the speed of market dynamics in the digital world.

B. Recommendations

India should officially accept the SSNDQ test as the benchmark for the relevant market in the context of digital services where there is no price involved, and the CCI should issue guidelines to explain how data collection, privacy parameters, and degradation of service are to be judged. This would help to resolve the most lasting doctrinal discrepancy in the CCI's digital methodology[43].

Secondly, India needs a market inquiry system under the CCI's statutory powers, similar to South Africa's Section 43B power. The sector-wide investigations with binding remedial authority are clearly more efficient to deal with structural platform competition issues[44].

Third, the CCI's enforcement capabilities in digital markets should be immediately institutionalized, and investments made in digital market investigators, economic analysis capacities, and expertise on algorithmic auditing should be made similar to those made in the UK's pre-legislative investments in the Digital Markets Unit[45].

Fourth, Brazil's Fair Competition Act's burden shifting is a good example for India. The current framework in Section 4 puts the onus of proving dominance and abuse on the CCI. This burden is structurally burdensome in digital markets where information asymmetry exists between regulatory and platform. A change in the evidentiary burden with respect to issues of objective justification of categorically prohibited conduct would make a meaningful contribution to enforcement effectiveness.

VI. Conclusion

This paper has analysed the CCI's approach to determining the relevant market and dominant position in digital abuse of dominance cases and compared to five comparator jurisdictions. The CCI has shown itself to be analytically sophisticated, for example in its detailed service-by-service market definition in Google Android, its innovative application of the "exploitative abuse" doctrine to commissions in digital marketplace billing in the Play Store case and its ground-breaking treatment of privacy as a non-price competition parameter in WhatsApp. These accomplishments put India in the league of top contenders to the developing economy

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competition enforcers.

The comparative analysis shows, however, that there are four structural gaps, namely the lack of a formal SSNDQ framework for defining the zero-price market, the inadequately developed multi-sided platform methodology, the unresolved controversy over the effects analysis and the temporal deficiencies of an ex-post enforcement of the rule. The current Indian legal framework does not effectively fill these gaps, which would be better done in the EU, UK, Brazil and South Africa. Comprehensive digital competition legislation is not a prerequisite to the path forward. The CCI may, within the scope of the powers vested in it by its statute, implement SSNDQ guidelines, create a more systematic multi-sided platform framework and requested to expand the powers of the market inquiry.

These are incremental changes, based on the learning from the comparison in this paper, that would have a material impact on the competition enforcement efficacy in digital markets in India.[46]

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