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**CATCHING THE DIGITAL LEVIATHANS: KILLER
ACQUISITIONS AND ALGORITHMIC CARTELS:
ASSESSING THE EFFICACY OF THE COMPETITION
(AMENDMENT) ACT, 2023 AND THE DRAFT DIGITAL
COMPETITION BILL**

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ABSTRACT

Traditional antitrust metrics measure market power through assets, turnover and price. Data-driven digital markets defeat these metrics: services are offered at a zero price, value lies in users and data rather than revenue, and network effects cause markets to tip rapidly toward a single winner. Ex-post investigations by the Competition Commission of India ('CCI') are correspondingly slow; the Google Android investigation ran for more than three years before a final order, and appeals followed.

India has responded in two ways. The Competition (Amendment) Act 2023 upgrades the existing law by introducing a deal value threshold for merger control, global turnover penalties, statutory recognition of hub-and-spoke cartels, and settlement and commitment procedures. The Draft Digital Competition Bill 2024 proposes a parallel ex-ante regime for Systemically Significant Digital Enterprises, modelled on the European Union's Digital Markets Act. Using doctrinal research, this paper analyses the notified provisions of the 2023 Amendment and the text of the draft Bill against constitutional benchmarks and comparative regimes in the European Union and the United Kingdom.

The paper argues that the 2023 Amendment successfully modernises traditional enforcement, most notably by closing the killer acquisition loophole, though the 'substantial business operations' test may catch domestic targets more readily than foreign ones. It remains, however, structurally too slow for digital markets, which justifies an ex-ante regime. Yet by imposing absolute prohibitions without an effects-based defence, the draft Bill risks over-regulation and may chill domestic innovation in the pursuit of curbing foreign incumbents. The paper recommends a countervailing benefits defence, calibrated thresholds, a regulatory dialogue mechanism and an absolute user floor for the deal value threshold.

Keywords: *competition law; deal value threshold; killer acquisitions; hub-and-spoke cartels; Digital Competition Bill; ex-ante regulation; SSDEs*

I. Introduction

A. The Digital Blindspot

The Competition Act 2002 was built for a world in which market power showed up on a balance sheet. Its merger control regime asked whether the parties crossed thresholds of assets and turnover; its abuse of dominance provisions asked how a firm's prices and output compared with those of its rivals. Both questions assume that the product has a price and that the firm earns money from selling it.¹

Digital markets defeat both assumptions. Search engines, social networks and messaging services are offered to users at a zero price. Users pay with attention and data, which the platform monetises on the other side of a multi-sided market. Revenue may arrive years after a product has captured its users, and may never appear in the entity that holds them. At the same time, direct and indirect network effects make these markets prone to 'tipping': each new user makes the service more valuable to the next, so that once a platform pulls ahead, rivals struggle to catch up and the market tips toward a single winner. The Parliamentary Standing Committee on Finance described this dynamic in its 2022 report on anti-competitive practices by Big Tech, and the Committee on Digital Competition Law ('CDCL') built on it in 2024.²

Two consequences follow. First, a dominant platform can acquire an emerging rival before that rival earns enough revenue to trigger merger review. Second, by the time the Competition Commission of India ('CCI') completes an investigation into conduct, the market may already have tipped. The CCI's investigation into Google's Android practices took more than three years from the prima facie order to the final decision, and a further round of appellate litigation followed.³

B. The Dual Legislative Response

India's response has two prongs. The first upgrades the existing law. The Competition (Amendment) Act 2023 ('2023 Amendment') introduces a deal value threshold for merger

¹Competition Act 2002, ss 3, 4, 5 and 6.

²Standing Committee on Finance (2022-23), *Anti-Competitive Practices by Big Tech Companies* (Fifty-Third Report, 17th Lok Sabha, December 2022); Ministry of Corporate Affairs, *Report of the Committee on Digital Competition Law* (2024).

³*Umar Javeed v Google LLC* Case No 39 of 2018 (CCI, 20 October 2022); *Google LLC v Competition Commission of India* Competition Appeal (AT) No 1 of 2023 (NCLAT, 29 March 2023).

control, allows penalties to be calculated on global turnover, recognises hub-and-spoke cartels, shortens merger review timelines, and creates settlement and commitment procedures.⁴ The second prong proposes a parallel framework. In March 2024, the CDCL published a Draft Digital Competition Bill 2024 ('DCB') that would impose ex-ante obligations on Systemically Significant Digital Enterprises ('SSDEs'), on the model of the European Union's Digital Markets Act ('DMA').⁵ The DCB has not been introduced in Parliament. The Standing Committee on Finance endorsed the move to ex-ante regulation in August 2025 but recommended refinements, and the Ministry of Corporate Affairs has indicated that market studies should precede any final framework.⁶

C. Research Questions

This paper asks two questions:

- (i) Does the deal value threshold effectively prevent dominant technology firms from executing stealth 'killer acquisitions' of Indian targets?
- (ii) Is a blanket ex-ante prohibition on conduct such as self-preferencing legally sound, or does it require an effects-based or 'rule of reason' defence?

D. Thesis and Method

The paper uses doctrinal legal research, reading the notified provisions of the 2023 Amendment and the text of the DCB against the constitutional benchmarks of Articles 14 and 19(1)(g) and against comparable regimes in the European Union and the United Kingdom. It argues that the 2023 Amendment successfully modernises traditional antitrust enforcement, most notably by closing the killer acquisition loophole, but remains structurally too slow for digital markets. An ex-ante regime is therefore justified. However, by imposing absolute prohibitions without an effects-based defence, the DCB risks over-regulating the market and chilling domestic technology innovation in the pursuit of curbing foreign incumbents.

⁴Competition (Amendment) Act 2023, brought into force in phases between 2023 and 2024.

⁵*Report of the Committee on Digital Competition Law* (n 2), which annexes the Draft Digital Competition Bill 2024 ('DCB').

⁶Standing Committee on Finance (2024-25), *Evolving Role of Competition Commission of India in the Economy, particularly the Digital Landscape* (Twenty-Fifth Report, 18th Lok Sabha, 11 August 2025). See also PRS Legislative Research, 'Standing Committee Report Summary' <<https://prsindia.org/policy/report-summaries/evolving-role-of-competition-commission-of-india>> accessed 5 October 2026.

II. Closing the M&A Loophole: The Deal Value Threshold

A. The Asset and Turnover Fallacy

Under section 5 of the Competition Act, a transaction is a ‘combination’ requiring prior approval only if the parties cross specified thresholds of assets or turnover. A separate de minimis exemption has long excluded acquisitions of targets with small Indian assets or turnover.⁷ These metrics are sensible proxies for economic significance in industrial markets, where a firm’s size is reflected in its factories and sales. They are poor proxies in digital markets, where a target’s value lies in its users, its data and its potential to challenge the incumbent.

The paradigm case is Facebook’s acquisition of WhatsApp in 2014 for about USD 19 billion. WhatsApp had hundreds of millions of users worldwide, including a large and fast-growing user base in India, but its revenue was negligible because it charged almost nothing for its service. The transaction did not meet the European Union’s turnover thresholds and reached the European Commission only through a referral from member states; the Commission cleared it unconditionally.⁸ In India, the transaction was not notified at all. Facebook’s earlier acquisition of Instagram in 2012 followed the same pattern.

Economists now describe such transactions as ‘killer acquisitions’: an incumbent acquires an innovative target to discontinue or absorb its products and pre-empt future competition.⁹ Even where a product is not shut down, the acquisition removes a potential competitor at the moment when it is cheapest to remove. The Competition Law Review Committee recommended a deal value threshold in 2019 precisely to address this gap.¹⁰ The difficulty of unwinding such acquisitions after the fact is illustrated by the United States, where the Federal Trade Commission’s challenge to Meta’s acquisitions of Instagram and WhatsApp, brought years after the transactions, failed at trial in November 2025.¹¹

B. The Deal Value Threshold

The 2023 Amendment inserts section 5(d), under which any acquisition, merger or amalgamation is a combination if the value of the transaction exceeds INR 2,000 crore and the

⁷Competition Act 2002, s 5; and the de minimis (target) exemption notified by the Central Government under s 54.

⁸*Facebook/WhatsApp* (Case COMP/M.7217) Commission Decision of 3 October 2014.

⁹Colleen Cunningham, Florian Ederer and Song Ma, ‘Killer Acquisitions’ (2021) 129 *Journal of Political Economy* 649.

¹⁰Ministry of Corporate Affairs, *Report of the Competition Law Review Committee* (July 2019).

¹¹*Federal Trade Commission v Meta Platforms Inc* No 20-cv-3590 (DDC, 18 November 2025).

enterprise being acquired has ‘substantial business operations in India’.¹² The provision came into force on 10 September 2024. The value of the transaction includes every valuable consideration, whether direct or indirect, immediate or deferred, and inter-connected transactions within a two-year window, so that deal structuring cannot easily split a single acquisition below the threshold. The de minimis exemption does not apply to transactions caught by the deal value threshold. The 2023 Amendment also reduces the overall review period from 210 to 150 days and the prima facie stage to 30 days, which lowers the cost of the additional notifications.¹³

The CCI (Combinations) Regulations 2024 give content to ‘substantial business operations in India’. For an enterprise providing digital services, the test is met if, in the preceding twelve months, the number of its business users or end users in India is at least ten per cent of its global users; separate tests based on gross merchandise value and turnover in India, also at the ten per cent level, apply in the alternative.¹⁴

C. The Ambiguity of ‘Substantial Business Operations’

The deal value threshold is a real improvement, and it brings India into line with Germany and Austria, which adopted transaction value thresholds in 2017.¹⁵ Its effectiveness, however, depends on how ‘substantial business operations’ is read and applied. Three difficulties stand out.

First, the user-based test is relative rather than absolute. A global platform with 500 million users would need 50 million in India to be caught. An Indian start-up with a small global footprint will easily cross the ten per cent line, but a foreign start-up with a large international user base and a modest but strategically important Indian presence may not. In a market as large as India, a user base of several million may be competitively significant even if it is less than ten per cent of the global total. The test may therefore capture domestic targets more readily than foreign ones, which is the opposite of what a killer acquisition rule aimed at global incumbents should do.

Second, measurement is uncertain. ‘Users’ may be defined as monthly active users, registered accounts or downloads, and these figures differ widely. The Regulations leave considerable

¹²Competition Act 2002, s 5(d) and Explanation, inserted by the Competition (Amendment) Act 2023 and brought into force on 10 September 2024.

¹³Competition Act 2002, ss 6(2A) and 29, as amended by the Competition (Amendment) Act 2023.

¹⁴Competition Commission of India (Combinations) Regulations 2024, reg 4.

¹⁵Gesetz gegen Wettbewerbsbeschränkungen (German Act against Restraints of Competition), s 35(1a); Kartellgesetz 2005 (Austria), s 9(4).

room for parties to choose a favourable metric, and the CCI has limited means to verify user data held outside India.

Third, the test is static. It looks at the preceding twelve months, while the competitive concern in a killer acquisition is the target's future trajectory. A target that is just entering India, or that is growing rapidly, may fall below the threshold at the moment of acquisition.

The CCI has a partial answer in its residual power to inquire into combinations that were not notified, and in the anti-avoidance breadth of the 'value of transaction' definition.¹⁶ But a threshold that relies on discretionary enforcement to plug its own gaps sacrifices some of the certainty that thresholds are meant to provide. A better design would combine the relative test with an absolute floor of Indian users, so that any target with a user base above a fixed number in India would be caught regardless of its global footprint.

III. The Ex-Post Deterrent: Global Turnover Penalties and New Cartels

A. Overruling Excel Crop Care

Section 27(b) of the Competition Act allows the CCI to impose a penalty of up to ten per cent of the average turnover of an enterprise for the preceding three financial years. In *Excel Crop Care Ltd v Competition Commission of India*, the Supreme Court held that 'turnover' meant 'relevant turnover', that is, the turnover from the product or service to which the contravention related, and not the total turnover of a multi-product enterprise.¹⁷ The Court reasoned that penalties must be proportionate to the infringement, that the purpose of the provision was deterrence rather than ruin, and that where a penal provision admits of two interpretations, the one favouring the enterprise should be adopted.

The 2023 Amendment reverses this outcome. An Explanation to section 27(b) now defines turnover as global turnover derived from all products and services by a person or enterprise.¹⁸ The CCI's Penalty Guidelines 2024 retain relevant turnover as the starting point for calculating the basic amount, which is then adjusted for aggravating and mitigating factors, but the statutory ceiling is now ten per cent of global turnover.¹⁹

The policy rationale is clearest in digital markets. A platform's infringing conduct in one market is often designed to protect revenue earned in another: a search engine may degrade competitors in a zero-price market to protect its advertising income. A penalty tied to the

¹⁶Competition Act 2002, s 20(1).

¹⁷*Excel Crop Care Ltd v Competition Commission of India* (2017) 8 SCC 47.

¹⁸Competition Act 2002, s 27(b), Explanation, inserted by the Competition (Amendment) Act 2023.

¹⁹Competition Commission of India (Determination of Monetary Penalty) Guidelines 2024.

turnover of the zero-price product would be close to nothing. The DMA and the United Kingdom's Digital Markets, Competition and Consumers Act 2024 both use global turnover for the same reason.²⁰

B. Proportionality under Article 14

The constitutional objection is that a penalty calculated on global, multi-product turnover may be disproportionate to the harm caused. Article 14 prohibits arbitrary state action, and the Supreme Court has adopted a structured proportionality test for restrictions on fundamental rights: a legitimate aim, a rational connection, necessity, and a fair balance between the restriction and its benefit.²¹ In *Excel Crop Care* itself, the Court invoked the doctrine of proportionality in choosing relevant turnover.

The answer turns on the distinction between the ceiling and the amount. Section 27 sets a maximum; it does not require the CCI to impose it. A ceiling based on global turnover is not in itself disproportionate, provided that the CCI determines the actual penalty through a structured process linked to the gravity of the infringement and the turnover affected. The Penalty Guidelines attempt to supply that structure. The danger lies in their application to conglomerates. For a diversified group such as Tata, Reliance or Amazon, ten per cent of global turnover is a sum entirely unrelated to the infringing product, and the CCI's discretion between relevant and global turnover is wide. A penalty that departs sharply from the turnover affected by the contravention, without reasons explaining why, would be vulnerable as manifestly arbitrary. The constitutionality of the provision thus depends on the CCI giving reasons for the step from relevant to global turnover in each case, and appellate tribunals insisting on them.

A further complication is the treatment of group entities. The Determination of Turnover or Income Regulations 2024 define the relevant turnover base, but the question whether the turnover of affiliated entities in a group may be aggregated will be decisive for conglomerates and is likely to be litigated.²²

C. Hub-and-Spoke and Algorithmic Cartels

Section 3(3) of the Competition Act presumes that horizontal agreements to fix prices, limit output, share markets or rig bids have an appreciable adverse effect on competition. Before

²⁰Regulation (EU) 2022/1925 (Digital Markets Act), art 30; Digital Markets, Competition and Consumers Act 2024 (UK), pt 1.

²¹*Modern Dental College and Research Centre v State of Madhya Pradesh* (2016) 7 SCC 353; *Justice K S Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1.

²²Competition Commission of India (Determination of Turnover or Income) Regulations 2024.

2023, the presumption applied only to agreements between enterprises engaged in identical or similar trade. The 2023 Amendment adds a proviso: an enterprise or association that is not engaged in identical or similar trade is presumed to be part of such an agreement if it participates or intends to participate in furtherance of it.²³ This is a statutory recognition of the hub-and-spoke cartel, in which competitors (the spokes) do not communicate directly but coordinate through a common intermediary (the hub), such as a supplier, distributor or platform.

The proviso has particular significance for algorithmic pricing. Where competing sellers each delegate pricing to the same third-party software, which ingests their confidential data and recommends prices, the software provider may act as the hub. The European Court of Justice addressed a version of this problem in *Eturas*, holding that travel agencies that received a system message announcing a discount cap through a common booking platform could be presumed to have participated in a concerted practice unless they publicly distanced themselves from it.²⁴ In the United States, a seller pleaded guilty in *United States v Topkins* to fixing prices of posters sold online through coordinated pricing algorithms, and the Department of Justice brought a civil action in 2024 against RealPage, alleging that landlords used its software to align rents.²⁵

Indian law had already brushed against the issue. In *Samir Agrawal v ANI Technologies*, the informant alleged that Ola and Uber acted as hubs that fixed fares for drivers through their algorithms. The CCI rejected the allegation, reasoning that drivers did not coordinate with one another and that fares set by a platform did not amount to a conspiracy among drivers. The Supreme Court upheld the closure on the merits while affirming that any person may bring information to the CCI.²⁶

The 2023 proviso changes the analysis in two ways. It removes the doubt about whether an enterprise outside the market can be a party to a horizontal agreement, and it shifts to the hub the burden of rebutting the presumption of adverse effect. Its limits are equally important. The presumption applies only once an ‘agreement’ is shown, and the Act defines agreement as an arrangement, understanding or concerted action. Where competitors independently adopt the same software, and the software independently produces similar prices without any exchange

²³Competition Act 2002, s 3(3), proviso, inserted by the Competition (Amendment) Act 2023.

²⁴Case C-74/14 *Eturas UAB v Lietuvos Respublikos konkurencijos taryba* EU:C:2016:42.

²⁵*United States v Topkins* No CR 15-00201 (ND Cal 2015); *United States v RealPage Inc* (MDNC, complaint filed 23 August 2024).

²⁶*Samir Agrawal v ANI Technologies Pvt Ltd* Case No 37 of 2018 (CCI, 6 November 2018); *Samir Agrawal v Competition Commission of India* (2021) 3 SCC 136.

of confidential information, it remains difficult to show the necessary meeting of minds. The CCI will need to develop evidentiary standards, for instance treating knowing participation in a system that pools rivals' non-public data as sufficient evidence of concerted action. Without such standards, the proviso will reach crude hub-and-spoke cartels but leave the more sophisticated forms of algorithmic coordination untouched.

IV. The Paradigm Shift: The Draft Digital Competition Bill

A. Defining the Gatekeepers

The DCB applies to enterprises providing 'Core Digital Services' listed in its Schedule, which include online search engines, online social networking services, video-sharing platforms, interpersonal communication services, operating systems, web browsers, cloud services, advertising services and online intermediation services such as app stores and marketplaces.²⁷

An enterprise providing a core digital service must notify the CCI, and may be designated an SSDE, if it meets both a financial test and a user test. The financial test is met if, in each of the three preceding financial years, the enterprise had Indian turnover of at least INR 4,000 crore, or global turnover of at least USD 30 billion, or gross merchandise value in India of at least INR 16,000 crore, or global market capitalisation of at least USD 75 billion. The user test is met if the core digital service has at least one crore end users or 10,000 business users in India.²⁸

The CCI may also designate an enterprise that does not meet these thresholds on qualitative grounds, such as its economic power, network effects, user dependence and barriers to entry. Group entities that provide the core digital service may be designated as Associate Digital Enterprises and bound by the same obligations.

B. Ex-Ante Obligations

The defining feature of the DCB is that it imposes conduct obligations on SSDEs in advance, without requiring the CCI to show dominance, abuse or effect in a given case. The draft prohibits SSDEs from:

- (i) favouring their own products or services, or those of related parties, over those of third parties (self-preferencing);
- (ii) using non-public data of business users operating on the core digital service to compete with those users;

²⁷DCB (n 5), Schedule I.

²⁸DCB, cl 3.

- (iii) restricting users from using or downloading third-party applications, or from changing default settings;
- (iv) restricting business users from directly communicating with end users, or from steering them to offers outside the platform, including alternative payment channels (anti-steering); and
- (v) requiring or incentivising users of a core digital service to use other products or services of the SSDE (tying and bundling).²⁹

The draft also imposes a general duty to operate fairly, non-discriminatorily and transparently, and authorises the CCI to specify obligations for each core digital service by regulation. Breach attracts a penalty of up to ten per cent of global turnover.

These obligations codify the theories of harm that the CCI has spent years establishing in individual cases. Self-preferencing was at the heart of the Google search and Android cases, and anti-steering was the issue in the Google Play billing case, in which the CCI found that Google's mandatory use of its own billing system for paid apps and in-app purchases was abusive.³⁰ The obligation against using non-public data mirrors the concerns raised about Amazon's private labels, such as Amazon Basics, on its marketplace. The DCB turns these case-specific findings into rules of general application.

C. Comparison with the DMA

The DCB borrows heavily from the DMA. The DMA designates 'gatekeepers' using financial thresholds (EUR 7.5 billion in annual EU turnover or EUR 75 billion in market capitalisation) and user thresholds (45 million monthly end users and 10,000 yearly business users in the EU).³¹ Article 5(4) prohibits anti-steering, and article 6(5) prohibits self-preferencing in ranking. The European Commission has already enforced these obligations, imposing fines in April 2025 on Apple for anti-steering restrictions in the App Store and on Meta for its 'pay or consent' advertising model.³²

There are, however, two significant differences. First, the DMA's obligations are more granular and come with built-in safety valves. Article 6(4), which requires gatekeepers to allow third-party app stores and sideloading, expressly permits the gatekeeper to take measures that are

²⁹DCB, ch III.

³⁰*XYZ v Alphabet Inc* Case No 07 of 2020 (CCI, 25 October 2022).

³¹Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector (Digital Markets Act) [2022] OJ L265/1, art 3(2).

³²European Commission, 'Commission finds Apple and Meta in breach of the Digital Markets Act' (Press release, 23 April 2025).

strictly necessary and proportionate to protect the integrity of the hardware or operating system. Articles 9 and 10 allow suspension of obligations on grounds of economic viability or public health and public security.³³ Second, the DCB's thresholds are lower relative to the size of the market, and its user test can be met with one crore users in a country of over 140 crore people. As discussed below, this risks sweeping in Indian firms that are large but not entrenched.

V. The Legal Friction: Innovation versus Blanket Regulation

A. The Missing Rule of Reason

Traditional competition law distinguishes between conduct that is illegal per se and conduct assessed under a rule of reason. Under the Competition Act, horizontal cartels attract a rebuttable presumption of adverse effect, while vertical agreements and most other conduct are judged by their actual or likely effects, considering factors that include benefits to consumers, improvements in production and distribution, and the promotion of technical and economic development.³⁴ The ex-post regime therefore allows an enterprise to defend its conduct by showing that it is efficient or pro-competitive.

The DCB does not. Its obligations apply to SSDEs as rules, not presumptions. The CDCL recommended that grounds for exemption be set out in the statute, but the draft does not contain a general efficiency or objective justification defence; it relies instead on the CCI's power to calibrate obligations by regulation.³⁵ For SSDEs, the listed practices are in substance illegal per se.

The case for an ex-ante regime is speed and certainty, and that case is strong. But speed and certainty come at a cost when the prohibited conduct is not always harmful. Self-preferencing is the clearest example. A search engine that displays its own map in response to a location query, or a marketplace that offers its own logistics service, may be integrating products in a way consumers value. Apple's justification for its closed App Store, that centralised review protects users from malware, fraud and privacy violations, was accepted as a legitimate pro-competitive rationale by the United States Court of Appeals for the Ninth Circuit in *Epic Games v Apple*.³⁶ One need not accept that justification in full to see that it raises a question of fact that deserves an answer. A rule that forbids such conduct regardless of its effects will sometimes prohibit conduct that benefits consumers.

³³Digital Markets Act (n 31), arts 6(4), 9 and 10.

³⁴Competition Act 2002, ss 3(3), 3(4) and 19(3).

³⁵*Report of the Committee on Digital Competition Law* (n 2); DCB, ch III.

³⁶*Epic Games Inc v Apple Inc* 67 F 4th 946 (9th Cir 2023).

There is also a constitutional dimension. Restrictions on the freedom of trade under Article 19(1)(g) must be reasonable, and the proportionality test asks whether a less restrictive measure would achieve the same aim.³⁷ A narrowly defined, rebuttable presumption of illegality, with the burden on the SSDE to prove a countervailing benefit, would achieve most of the speed and certainty of a per se rule while leaving room for genuine efficiencies. Its availability is a strong argument that an absolute prohibition goes further than necessary. The United Kingdom's Digital Markets, Competition and Consumers Act 2024 demonstrates that such a design is workable: it allows a firm with strategic market status to escape liability for breach of a conduct requirement by showing countervailing benefits to consumers that could not be achieved without the conduct.³⁸

B. The Domestic Innovation Concern

The DCB's thresholds raise a further concern. A test that can be met by one crore Indian users or INR 4,000 crore of Indian turnover will catch not only the global platforms whose conduct prompted the reform but also the largest Indian firms, such as leading e-commerce, food delivery and payments platforms. These firms may be large, but many are not entrenched in the way the DMA's gatekeepers are, and several compete fiercely with each other and with foreign incumbents. Imposing the full set of ex-ante obligations on them may raise their compliance costs and slow their product integration at the very moment they are trying to challenge incumbents. The Standing Committee's recommendation that a mechanism be introduced to rebut SSDE designation in exceptional cases reflects this concern.³⁹

C. Settlements and Commitments

The contrast with the 2023 Amendment is instructive. Sections 48A and 48B, operationalised by regulations in 2024, allow an enterprise under investigation for anti-competitive agreements or abuse of dominance to offer commitments at an early stage, or a settlement after the investigation report, without any finding of contravention.⁴⁰ The CCI accepted its first settlement under this framework in 2025, in proceedings against Google concerning Android TV, with a settlement amount and behavioural commitments.⁴¹ These tools reflect a regulatory

³⁷*Modern Dental College* (n 21).

³⁸Digital Markets, Competition and Consumers Act 2024 (UK), s 29.

³⁹Standing Committee on Finance, Twenty-Fifth Report (n 6).

⁴⁰Competition Act 2002, ss 48A and 48B; Competition Commission of India (Settlement) Regulations 2024; Competition Commission of India (Commitment) Regulations 2024.

⁴¹*Kshitiz Arya v Google LLC* Case No 19 of 2020 (CCI, settlement order, 2025).

philosophy of correcting conduct cooperatively, quickly and at lower cost, while preserving the enterprise's ability to contest liability.

The DCB contains no equivalent mechanism for SSDEs and no structured regulatory dialogue of the kind found in article 8 of the DMA, which allows a gatekeeper to ask the Commission to specify how it should comply.⁴² An SSDE's options under the draft are to comply as it understands the obligation or risk a penalty of up to ten per cent of global turnover. The juxtaposition is striking: the same regulator that is being encouraged to settle with dominant enterprises under the Competition Act would be required to treat the same conduct as per se illegal under the DCB.

VI. Conclusion and Policy Recommendations

A. Synthesis

The Competition (Amendment) Act 2023 patches the most serious holes in India's traditional enforcement regime. The deal value threshold brings data-rich, revenue-poor targets within merger control. Global turnover penalties restore deterrence against firms that monetise in one market what they protect in another. The hub-and-spoke proviso gives the CCI a statutory foothold against coordinated conduct that runs through common intermediaries, including pricing algorithms. Settlements and commitments allow faster, cooperative correction of conduct. Each of these reforms is a sensible upgrade, though each also leaves open questions of definition and application that the CCI and the courts will need to resolve.

None of them, however, changes the basic tempo of ex-post enforcement, which remains too slow for markets that tip. The DCB is the right response to that problem in principle. In its current form, though, it represents a pendulum swing toward over-regulation. It treats a list of practices as illegal per se, without an effects-based defence, sets thresholds that may capture India's own emerging champions, and offers no structured route to cooperative compliance.

B. Policy Recommendations

Four changes would preserve the benefits of the ex-ante model while reducing its risks:

- (i) **An effects-based defence.** The final Digital Competition Act should allow an SSDE to rebut liability for breach of an obligation by proving, on clear evidence, that the conduct produces countervailing benefits for consumers that are indispensable and could not be achieved by less restrictive means, on the model of the United Kingdom's

⁴²Digital Markets Act (n 31), art 8.

countervailing benefits exemption. The burden should rest on the SSDE, preserving most of the speed of ex-ante enforcement.

- (ii) **Calibrated jurisdictional thresholds.** The financial and user thresholds should be raised and linked to entrenchment, for instance by requiring that the threshold be met over a longer period, and by adding a statutory mechanism to rebut designation, as the Standing Committee has recommended, so that the regime targets durable gatekeepers rather than growing domestic firms.
- (iii) **A regulatory dialogue and compliance specification.** The Act should allow an SSDE to seek specification of how it must comply, as article 8 of the DMA does, and should allow the CCI to accept commitments in respect of ex-ante obligations, aligning the DCB with the cooperative tools already operational under the Competition Act.
- (iv) **An absolute user floor for the deal value threshold.** Section 5(d) and the Combinations Regulations should be supplemented with an absolute floor of Indian users, so that targets with a significant Indian user base are caught regardless of their global footprint, and the ‘value of transaction’ should be clarified for earn-outs and contingent consideration.

The question for India is not whether to regulate digital markets but how to do so without mistaking size for harm. An ex-ante regime that allows efficiency to be proved, and that targets entrenched power rather than success, would catch the digital leviathans without stifling the firms that might one day compete with them.

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