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REGULATING SELF-PREFERENCING BY DIGITAL PLATFORMS: AN EFFECTS-BASED APPROACH TO COMPETITION LAW

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ABSTRACT

Large online platforms frequently operate a marketplace while also competing within it. This dual role creates an incentive to favour their own offerings over those of dependent rivals, a practice known as self-preferencing. This paper analyses the concept, classifies it into four types, and assesses its ambivalent effects on competition. It then evaluates two regulatory strategies: traditional ex post enforcement, which scrutinises conduct case by case after the event, and ex ante regulation, which imposes obligations on designated platforms in advance. The paper contends that self-preferencing is not inherently harmful, so that a blanket prohibition is unwarranted, but that conventional enforcement is often slow and hampered by evidential difficulties. It concludes that a calibrated model is preferable, combining an effects-based standard, precisely defined conduct, targeted advance rules for the highest-risk practices, and improved regulatory access to evidence.

Keywords: self-preferencing; online platforms; competition law; abuse of dominance; Digital Markets Act; Digital Competition Bill; ex ante regulation.

INTRODUCTION

A consumer who searches for a product on a large online marketplace may find that the most prominent results are not necessarily the best or the cheapest, but those supplied by the marketplace operator itself. This conduct, known as self-preferencing, occurs where a platform that hosts third-party businesses also competes with them and accords its own offerings more favourable treatment.

The issue has acquired considerable importance because online platforms now occupy a central place in economic life. By 2023, world's ten most valuable companies as Apple, Microsoft, Google, Amazon and Meta were platform businesses, commonly grouped under the label 'Big

Tech'.¹ Many undertakings can reach consumers only through such platforms, and competition authorities worldwide have responded with investigations, litigation and legislative reform.² The debate remains sharply polarised: some commentators would prohibit platforms from selling their own products altogether, whereas others regard self-preferencing as a legitimate feature of the competitive process and caution that intrusive regulation may impair innovation.³ This paper addresses the following question: *in what circumstances should self-preferencing be unlawful, and what type of legal rule is best suited to regulating it?* The legal assessment of self-preferencing is, however, not straightforward. Unlike conventional forms of exclusionary conduct, self-preferencing may involve a platform using an advantage arising from its dual role as both intermediary and competitor, without necessarily excluding rivals through an express refusal to deal or discriminatory contractual term. The same conduct may generate efficiencies, such as improved integration of products and services, while simultaneously disadvantaging competing businesses that depend on access to the platform. The central challenge for competition law is therefore to distinguish between self-preferencing that reflects legitimate competition on the merits and conduct that exploits a platform's intermediary position to distort competition in an adjacent market. This distinction becomes particularly important in digital markets, where network effects, economies of scale and control over commercially significant data can reinforce a platform's market position and make competitive harm more difficult to remedy once it occurs.

THE CONCEPT OF SELF-PREFERENCING

Self-preferencing may be defined as conduct whereby a platform treats its own products or services, or those of its affiliates, more favourably than those of competitors operating on the same platform.⁴ The concept nonetheless remains loosely defined, and a leading commentator has cautioned that the label is applied to heterogeneous conduct without clear limiting principles.⁵ The point is of legal significance: refusal to deal, margin squeeze, tying and exclusive dealing are each governed by distinct legal standards, and subsuming them under a

¹Min Jung Kim, 'Competition Policy for Online Platforms' Self-Preferencing Conducts' (KDI Focus No 136, Korea Development Institute 2024) 2.

²Yuta Kittaka, Susumu Sato and Yusuke Zenryo, 'Self-preferencing by platforms: A literature review' (2023) 66 Journal of the Japanese and International Economies 101191.

³OECD, 'The intersection between competition and consumer policy in digital markets' (2026) https://www.oecd.org/en/publications/competition-and-consumer-policy-in-digital-markets_042c0c49-en/full-report/component-4.html accessed 7 October 2026.

⁴Pablo Ibáñez Colomo, 'Self-Preferencing: Yet Another Epithet in Need of Limiting Principles' (2020) 43 World Competition 417.

⁵Pablo Ibáñez Colomo (n 4) 417.

single heading generates uncertainty.⁶

Self-preferencing derives from the platform's 'dual role', an arrangement frequently likened to 'a referee playing as a player'.⁷ The platform sets the rules and supplies the core intermediary service, yet also sells its own goods within the same environment, as where an operating system provider supplies its own applications or a marketplace operator acts as a retailer. Platforms typically begin by offering free services in order to build a user base and, on reaching sufficient scale, expand into adjacent markets to generate revenue.⁸

It does not follow that a platform will invariably favour itself because it also benefits from broad participation by business users, it has reason to treat them fairly. The platform therefore faces competing incentives: immediate profit from self-favouring on the one hand, and longer-term gains from reputation and ecosystem growth on the other. As the platform acquires dominance, the incentive towards fair treatment weakens.⁹

A FOURFOLD CLASSIFICATION

Self-preferencing is divided into four types according to the pattern and nature of the conduct. The first two concern the placement of products and services, while the latter two concern access to data, inputs and markets.¹⁰

Type 1: preferential placement through undisclosed algorithms: Concealed ranking or recommendation algorithms favour the platform's own offerings. The paradigm example is the European Union's *Google Shopping* case, in which Google was found to have favoured its own comparison shopping service and demoted rivals in general search results.¹¹ The Korean Naver and Kakao Mobility cases follow a similar pattern: Naver favoured products from its own marketplace, and Kakao Mobility adjusted its dispatch algorithm in favour of affiliated taxis.¹² The *Amazon Buy Box* case concerned the prominent placement allegedly afforded to Amazon's own retail business.¹³

⁶Elias Deutscher, 'Google Shopping and the Quest for a Legal Test for Self-preferencing Under Article 102 TFEU' (2021) European Papers.

⁷Carlo Petrucci, 'Self-preferencing in the EU: a legal and policy analysis of the Google Shopping case and the Digital Markets Act' (2023) 22 Competition Law Journal 18.

⁸Yuta Kittaka, Susumu Sato and Yusuke Zenno (n 2).

⁹OECD (n 3).

¹⁰Yuta Kittaka, Susumu Sato and Yusuke Zenno (n 2).

¹¹European Commission, Decision of 27 June 2017 in Case AT.39740 Google Search (Shopping) C(2017) 4444 final.

¹²Korea Fair Trade Commission, Naver self-preferencing decision (October 2020); Chung Byung-Duck, 'A study on regulation of monopoly behavior of online platform operators – Focusing on Kakao Mobility's preferential treatment case' (2023) 34 Management Law 169.

¹³European Commission, Communication published pursuant to Article 27(4) of Regulation 1/2003 in Cases

Type 2: identifiable preferential placement: This conduct is observable externally and typically takes the form of pre-installation or default settings. Apple, for example, pre-installed its own applications as defaults, and until the release of iOS 14 in September 2020 users could not substitute a third-party browser or email application.¹⁴

Type 3: discriminatory access to data: The platform exploits non-public data generated by third-party sellers in order to launch competing imitation products. In the *Amazon Marketplace* case, the European Commission found that Amazon had used extensive seller data to advantage its own retail operations.¹⁵

Type 4: discriminatory access to other inputs and markets: The platform affords its own products preferential access to device functionalities, ancillary services such as delivery, or the market itself. Illustrations include the German investigation into Apple's App Tracking Transparency policy, which exempts Apple's own applications from a consent requirement imposed on third parties, and Amazon's suspension of deliveries of third-party non-essential goods during the COVID-19 pandemic while it continued to deliver comparable goods sold by its own retail arm.¹⁶

ANTICOMPETITIVE AND PROCOMPETITIVE EFFECTS

The principal concern is leverage. A platform that is dominant in its core intermediary business may exploit that position to obtain an unfair advantage in an adjacent market, thereby raising rivals' costs or foreclosing them.¹⁷ The immediate effects differ by type: Types 1 and 2 diminish rivals' sales opportunities; Type 3 weakens their incentive to innovate; and Type 4 reduces product quality or access to the market.¹⁸ Over time, prices may rise while product variety and innovation decline.¹⁹ Preferential placement may also be exploitative of consumers, who tend to be passive recipients of ranked results and to treat prominence as a proxy for quality.²⁰

AT.40703 Amazon – Buy Box and AT.40462 Amazon Marketplace, C(2022) 5078, OJ C 278, 20 July 2022, 8.

¹⁴Yuta Kittaka, Susumu Sato and Yusuke Zenno (n 2).

¹⁵European Commission, Decision of 20 December 2022 in Cases AT.40462 Amazon Marketplace and AT.40703 Amazon Buy Box, C(2022) 9442 final; see also Commission summary, OJ C 87, 9 March 2023, 7.

¹⁶Bundeskartellamt, 'Bundeskartellamt has concerns about the current form of Apple's App Tracking Transparency Framework' (13 February 2025) https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2025/02_13_2025_ATTF.html accessed 2 October 2026.

¹⁷Federico Etro, 'e-Commerce platforms and self-preferencing' (2024) 38 Journal of Economic Surveys 1516.

¹⁸Yuta Kittaka, Susumu Sato and Yusuke Zenno (n 2).

¹⁹Federico Etro (n 18).

²⁰OECD (n 3).

The same conduct may nevertheless generate efficiencies. A platform that sells its own goods may reduce prices by eliminating ‘double marginalisation’ (the successive addition of margins by two firms in a supply chain), coordinate decision-making more effectively, and invest further in the platform itself.²¹ Pre-installation may lower consumers’ search costs, and self-favouring may safeguard quality, security and privacy where third-party offerings are difficult to verify.²² Type 3 conduct may enhance product diversity where the platform introduces genuinely differentiated products. The efficiency case is weakest for Type 1, since a truly superior product would rank highly in any event, and for conduct that merely impedes the deletion of pre-installed applications.²³

The net effect is therefore context-dependent. The European Union found that Google’s conduct excluded competitors, whereas the United States Federal Trade Commission (2013) and the High Court of England and Wales (2016) concluded that comparable conduct was unlikely to foreclose competition.²⁴ Anticompetitive effects are more likely where the platform’s own products are inferior to third-party alternatives, and efficiency gains are likely to be greater where competition in the adjacent market is limited.²⁵

REGULATORY RESPONSES IN EUROPE

Self-preferencing has traditionally been addressed through the prohibition of abuse of a dominant position, applying an effects-based ‘rule of reason’. In *Google Shopping*, the Commission held in 2017 that Google had abused its dominance in general search and imposed a fine of €2.42 billion.²⁶ The General Court upheld the decision in 2021,²⁷ and the Court of Justice dismissed Google’s appeal in September 2024.²⁸ The investigation alone, however, lasted more than seven years,²⁹ which illustrates the principal weakness of this approach: its protracted duration. A more expeditious alternative is the commitment decision, employed in December 2022 to conclude the Amazon investigations once Amazon had offered to modify

²¹Federico Etro (n 18).

²²Yuta Kittaka, Susumu Sato and Yusuke Zenryo (n 2).

²³Yuta Kittaka, Susumu Sato and Yusuke Zenryo (n 2).

²⁴European Commission, *Google Search (Shopping)* (n 12); Federal Trade Commission, ‘Statement of the Federal Trade Commission regarding Google’s search practices’ (3 January 2013); *Streetmap EU Ltd v Google Inc* [2016] EWHC 253 (Ch).

²⁵Yuta Kittaka, Susumu Sato and Yusuke Zenryo (n 2).

²⁶European Commission, Decision of 27 June 2017 in Case AT.39740 *Google Search (Shopping)* C(2017) 4444 final.

²⁷Case T-612/17 *Google and Alphabet v Commission (Google Shopping)* EU:T:2021:763.

²⁸Case C-48/22 P *Google and Alphabet v Commission (Google Shopping)* EU:C:2024:726.

²⁹Carlo Petrucci (n 8).

its conduct.³⁰

EX ANTE REGULATION

A number of jurisdictions now designate large platforms in advance and subject them to specified obligations. Under the European Union's Digital Markets Act (DMA), providers of 'core platform services' are presumed to be 'gatekeepers' where they meet quantitative thresholds, broadly EU turnover of €7.5 billion (or market value of €75 billion) together with 45 million monthly end users and 10,000 yearly business users, and the Commission may also designate on a qualitative basis.³¹ Article 6(5) prohibits a gatekeeper from ranking its own products more favourably than similar third-party offerings.³² Fines may reach 10 per cent of worldwide turnover, rising to 20 per cent for repeated infringements.³³

In Germany, the 10th Amendment (in force since January 2021) empowers the Bundeskartellamt to designate undertakings of 'paramount significance for competition across markets', principally by reference to qualitative criteria, and to prohibit specified practices, including self-favouring. The undertaking must provide an objective justification, so that the burden of proof is partly shifted to it.³⁴ In the United Kingdom, the Digital Markets, Competition and Consumers Act 2024 enables the Competition and Markets Authority to designate firms with 'strategic market status' and to impose conduct requirements tailored to each firm.³⁵

SELF-PREFERENCING IN INDIA

India has no digital-specific competition legislation in force. Self-preferencing is accordingly addressed under section 4 of the Competition Act 2002, which prohibits the imposition of unfair or discriminatory conditions and the use of dominance in one market to enter or protect another.³⁶ The Competition Commission of India (CCI) has applied these provisions to platforms. In *Matrimony.com v Google* (2018), it found an abuse of dominance in online search,

³⁰European Commission, Decision of 20 December 2022 in Cases AT.40462 Amazon Marketplace and AT.40703 Amazon Buy Box, C(2022) 9442 final.

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) and (8).

³²Digital Markets Act (n 32) art 6(5).

³³Digital Markets Act (n 32) art 30.

³⁴Gesetz gegen Wettbewerbsbeschränkungen (Act against Restraints of Competition) (GWB), s 19a; Bundeskartellamt, 'Apple Inc. is of paramount significance for competition across markets' (5 April 2023).

³⁵Digital Markets, Competition and Consumers Act 2024, ss 2, 19–20 <https://www.legislation.gov.uk/ukpga/2024/13/part/1/2026-09-30> accessed 1 October 2026.

³⁶Competition Act 2002 (India), s 4(2)(a)(i) and (e).

including the prominence given to Google's own specialised search offering.³⁷ In 2022 it decided *FHRAI v MakeMyTrip*, which concerned discriminatory display and preferential placement on a travel platform,³⁸ and penalised Google in respect of the Android ecosystem, including pre-installation and tying,³⁹ and its Play Store policies.⁴⁰ The National Company Law Appellate Tribunal (NCLAT) largely upheld the Android findings but set aside certain remedies, underscoring the requirement of proportionality.⁴¹ These decisions demonstrate that existing law can reach self-preferencing, but also that enforcement is slow: the complaints in *Matrimony.com* were filed in 2012 and determined in 2018.⁴²

That delay was among the considerations underlying the Draft Digital Competition Bill 2024 (Draft DCB), published with the report of the Committee on Digital Competition Law on 12 March 2024.⁴³ Under the draft, the CCI would designate 'Systemically Significant Digital Enterprises' (SSDEs) providing listed core digital services, applying financial and user thresholds together with a qualitative route.⁴⁴ Section 10 imposes a general duty of fair and transparent dealing, and section 11 expressly prohibits self-preferencing.⁴⁵ Penalties could reach 10 per cent of global turnover.⁴⁶

The draft attracted substantial criticism. Commentators have noted the absence of an impact assessment and of any business-justification defence, and the risk that SSDE designation could capture Indian firms.⁴⁷ Other scholars have recommended clearer thresholds, rules on ranking transparency, market-investigation powers and a limited shift in the burden of proof.⁴⁸ The Draft DCB has not been enacted. Reports indicate that the Standing Committee on Finance

³⁷*Matrimony.com Ltd v Google LLC* (Case Nos 07 and 30 of 2012) (CCI, 8 February 2018).

³⁸*Federation of Hotel & Restaurant Associations of India v MakeMyTrip India Pvt Ltd* (Case No 14 of 2019) (CCI, 19 October 2022).

³⁹*XYZ (Confidential) v Alphabet Inc* (Case No 39 of 2018) (CCI, 20 October 2022).

⁴⁰*In Re: Alleged Anti-Competitive Practices by Google in relation to its Play Store Policies* (Suo Motu Case No 07 of 2020) (CCI, 25 October 2022).

⁴¹*Google LLC v Competition Commission of India* (Competition Appeal (AT) No 1 of 2023) (NCLAT, 29 March 2023).

⁴²*Matrimony.com* (n 41).

⁴³Ministry of Corporate Affairs, Report of the Committee on Digital Competition Law (Government of India, 2024).

⁴⁴Draft Digital Competition Bill 2024 (India), annexed to Ministry of Corporate Affairs, Report of the Committee on Digital Competition Law (Government of India, 2024), s 3.

⁴⁵Draft Digital Competition Bill 2024 (India), ss 10–11.

⁴⁶Draft Digital Competition Bill 2024 (India), s 28.

⁴⁷Konark Bhandari, 'Assessing the Nine Anticompetitive Practices Under the Draft Digital Competition Bill' (Carnegie India, 21 August 2025) <https://carnegieendowment.org/research/2025/08/assessing-the-nine-anticompetitive-practices-under-the-draft-digital-competition-bill> accessed 2 October 2026.

⁴⁸Anush Ganesh, Mohit Yadav and Gaurav Pathak, 'The Indian Draft Digital Competition Bill and Report: A Critical Perspective' (2025) *Indian Law Review* <https://doi.org/10.1080/24730580.2025.2506958>.

recommended its withdrawal and redrafting in August 2025,⁴⁹ that the government determined that a market study should precede any further step,⁵⁰ and that the study remained pending in August 2026.⁵¹ Sources describe the draft variously as ‘withdrawn’ or paused, but all agree that no ex ante digital competition law is in force, so that section 4 of the Competition Act remains the governing provision.

COMPARATIVE ANALYSIS AND RECOMMENDATIONS

The regimes share a common structure: advance designation of large firms, an express prohibition of self-preferencing, and turnover-based penalties. They diverge in regulatory style. The DMA is highly prescriptive, the United Kingdom’s model is flexible and firm-specific, and the Draft DCB occupies a middle position, combining detailed rules with a general duty of fair dealing. They also differ on the burden of proof: Germany requires undertakings to justify their conduct,⁵² whereas the Draft DCB provides no justification defence, which critics regard as a significant deficiency.⁵³ Finally, the European Union and Germany regulate mature markets, whereas India’s digital economy is still expanding rapidly, so that wholesale transplantation of European rules may deter domestic platforms.⁵⁴

Advance rules have genuine advantages. Platform markets tend towards concentration, consumers are passive, and the opacity of algorithms and data makes the conduct difficult to prove, with the result that protracted proceedings such as *Google Shopping* may yield remedies too late.⁵⁵ Self-preferencing may, however, also reduce prices and improve quality, so that a broad prohibition risks discouraging innovation.⁵⁶ A calibrated model is therefore preferable. Drawing on Kim’s analysis and the Indian criticism, such a model would:

⁴⁹‘Why India Withdrew the Digital Competition Bill 2024’ (Medianama, August 2025) <https://www.medianama.com/2025/08/223-india-digital-competition-bill-2024-withdrawal/> accessed 3 October 2026.

⁵⁰‘MCA to Conduct a Study on Ex-Ante Regulations for Digital Markets’ (Business Standard, August 2025) https://www.business-standard.com/amp/industry/news/mca-to-study-impact-of-digital-competition-bill-before-final-rollout-125080300429_1.html accessed 3 October 2026.

⁵¹‘Govt Orders Market Study to Refine India’s Digital Competition Bill’ (Medianama, August 2026) <https://www.medianama.com/2026/08/223-digital-competition-bill-market-study/> accessed 2 October 2026.

⁵²Gesetz gegen Wettbewerbsbeschränkungen (GWB), s 19a; Bundeskartellamt, ‘Apple Inc. is of paramount significance for competition across markets’ (5 April 2023).

⁵³Konark Bhandari (n 51).

⁵⁴OECD (n 3).

⁵⁵Yuta Kittaka, Susumu Sato and Yusuke Zenryo (n 2); OECD (n 3).

⁵⁶Federico Etro (n 18); Yuta Kittaka, Susumu Sato and Yusuke Zenryo (n 2).

1. Retain an effects-based standard as the default, weighing likely harm against efficiency gains;⁵⁷
2. Define the prohibited conduct by type rather than by the single label ‘self-preferencing’;⁵⁸
3. Direct advance rules at the highest-risk conduct, namely Type 1 and the imitation of rivals’ products using non-public data;⁵⁹
4. Afford regulators prompt access to algorithms and data, and use commitment decisions to expedite resolution;⁶⁰
5. Permit undertakings to advance an objective justification, with any shift in the burden of proof confined to high-risk conduct; and⁶¹

CONCLUSION

Self-preferencing is a family of behaviours rather than a single practice. Each of the four types may foreclose rivals and mislead consumers, yet each may also yield benefits in price, quality, convenience and security. Case-by-case enforcement is flexible but slow, while ex ante regulation is faster but carries a risk of over-reach. India has, for the present, deferred its choice between them. The preferable course lies between the two: an effects-based standard, precisely defined conduct, advance rules confined to the highest-risk practices, improved regulatory access to evidence, and a fair opportunity for firms to justify their conduct. In this way the law can discipline the referee-player without undermining the innovation on which digital markets depend.

⁵⁷Yuta Kittaka, Susumu Sato and Yusuke Zenryo (n 2).

⁵⁸Pablo Ibáñez Colomo (n 4); Elias Deutscher (n 7).

⁵⁹European Commission, Amazon Marketplace and Amazon Buy Box (n 31).

⁶⁰European Commission, Amazon Marketplace and Amazon Buy Box (n 31); Digital Markets, Competition and Consumers Act 2024 (n 36).

⁶¹Gesetz gegen Wettbewerbsbeschränkungen (GWB), s 19a; Konark Bhandari (n 51).