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UNRAVELLING ANTITRUST CHALLENGES IN INDIA'S ARTIFICIAL INTELLIGENCE LANDSCAPE - A CALL FOR REGULATION AGAINST ALGORITHMIC SELF-PREFERENCE

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ABSTRACT:

In this advancing era of technology and the change in the technological landscape of India, the industries areexperiencing the integration of Artificial Intellegince (AI) rapidly. This has brought concerns regarding the "antitrust challenges" and it's becoming increasingly prominent. The proliferation or incorporation of AI-driven algorithms on intermediary platforms raises questions about fair competition and market dynamics. Such algorithms introduced into the system to optimize outcomes, may inadvertently favour the creators of the platform or the operators leading to practices which are anti-competitive in nature and can also stifle innovation and can hinder small players from entering the market. While the power to adapt and self-learn is the hallmark of AI, although the very feature risks the presence of bias that is capable of favouring specific players inadvertently effecting consumer's choice. The development of such bias through the historical data creates a feedback loop of a specific product or an entity, consolidating their dominance. Therefore, it is essential to recognise that the existing competition laws in India are primarily developed before the advent of digital technology and might not adequately account for the difficulties brought up by quickly advancing technologies like artificial intelligence. It is crucial that the current legal framework be completely updated since these antiquated regulations could not have the clarity required to deal with cutting-edge issues like algorithmic self-preference. In order to maintain fair competition, innovation, and consumer welfare in the face of a technological environment that is becoming more and more dynamic, it is imperative that the legal landscape be updated and particularly address the intricacies of AI-driven marketplaces. This article explores the complex network of antitrust concerns that arise from the widespread application of algorithms across several industries, highlighting the necessity of regulatory action to limit algorithmic self-preference.

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Keywords: Artificial Intelligence, Competition Law, Intermediary, Self-Preferencing Algorithms

INTRODUCTION:

India is leading the way in this digital revolution, which has brought about an unparalleled shift in several industries due to the unrelenting progress of artificial intelligence (AI) technology[2]. But despite the potential for innovation, antitrust issues remain a major worry, especially in light of algorithmic self-preference[3]. This article aims to offer a thorough examination of these complex problems within the Indian AI environment. It breaks its focus into three essential parts, each of which adds a distinct viewpoint to the discussion.

This article's initial section explores the core of the issue and aims to clarify the nuances of algorithmic self-preference. Concerns have been raised about unintentional biases that might result in preferential treatment and alter market dynamics in an era where AI algorithms are increasingly trusted with decision-making processes[4]. The writers have comprehensively gathered primary facts to support these worries. This empirical basis entails the analysis of AI-powered systems in many industries, exposing situations in which algorithms inadvertently display prejudices and inclinations.

The gathered information provides a clear picture of the issues at hand by presenting instances from the actual world where algorithmic self-preference may unintentionally promote market concentration, limit consumer choice, and erect obstacles to entrance for smaller rivals[5]. This chapter intends to highlight the significance of addressing algorithmic self-preference as a crucial antitrust problem by giving this original data and concrete proof of its possible effects on fair competition and market integrity.

Moving on to the second section, we examine the Indian as well as world-wide legal system and assess how well the country's present competition rules handle the subtleties brought about by artificial intelligence technology. Recognising that the majority of the laws in force

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[2]Bougette, Self-preferencing and competitive damages: A focus on exploitative abuses. *The Antitrust Bulletin*, *67*(2), pp.190-207, (2022).
[3]Id.
[4]Bias in algorithms – artificial intelligence and discrimination, Bias in Algorithms - Artificial Intelligence and Discrimination, https://fra.europa.eu/sites/default/files/fra_uploads/fra-2022-bias-in-algorithms_en.pdf (last visited Jan 29, 2024).
[5]Herbert Hovenkamp, *Antitrust and self-preferencing*, SSRN Electronic Journal (2023).

were written before the advent of digital technology is crucial in order to prevent legal loopholes when it comes to handling the complexities of algorithmic decision-making.

Furthermore, we go beyond national boundaries and participate in international debates around AI-related antitrust concerns. Through an analysis of the legal structures and prevailing discourses across different nations and economic regions, our goal is to extract knowledge from global experiences. The examination of noteworthy examples that have surfaced internationally complements this comparative research, offering important insights and precedents that can guide the development of India's legislative response to algorithmic self-preference.

This research article's third and last section explores potential remedies and emphasises the need for a proactive regulatory framework. This section offers a range of legislative strategies to handle algorithmic self-preference, drawing on ideas from primary data, international viewpoints, and knowledge of India's distinct AI environment.

These solutions range from the creation of industry-specific rules catered to the complexities of AI applications to the integration of transparency mechanisms in algorithmic decision-making processes. Furthermore, we take into account the viability of cooperative efforts including governmental entities, industry participants, and legal professionals in the creation and execution of efficient rules. By eliminating anticompetitive behaviour and promoting innovation in equal measure, this progressive strategy seeks to create a competitive and welcoming market environment that benefits companies and customers alike.

In summary, this study offers a thorough and in-depth examination of the many difficulties related to algorithmic self-preference in India's AI environment. By including original data, international viewpoints, and prospective regulatory factors, we want to make a significant contribution to the current conversation on antitrust concerns in the age of AI.

CHAPTER 1: DECODING THE DILEMMA: ANALYSIS OF THE ISSUE:

The late 19th and early 20th centuries, a time of significant industrialization and globalisation, was when competition law first emerged[6]. With markets growing and sectors growing, concerns about the negative impact of trade restrictions and monopolies on fair

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[6]Martin Wolf, Shaping globalization -- finance & development, September 2014 (2014),
https://www.imf.org/external/pubs/ft/fandd/2014/09/wolf.htm (last visited Jan 29, 2024).

market operations surfaced. The understanding that unchecked market dominance might cause economic imbalances, obstruct innovation, and jeopardise consumer welfare led to the necessity for competition legislation.

With the passing of the Monopolies and Restrictive Trade Practices (MRTP) Act in 1969[7], the historical trajectory of competition law in India came to pass. The purpose of this Act was to stop unfair trade practices that might weaken the market's ability to compete and to limit monopolistic behaviours. But as the Indian economy developed and grew more globalised, it became clear that a stronger and more extensive regulatory structure was required.

The Competition Act of 2002[8] marked a turning point in the history of competition law in India by introducing a new approach to antitrust laws. The Competition Commission of India (CCI) was established in 2003 as a direct result of this legal change.[9] Equipped with both legislative and self-governance powers, the CCI has become a crucial organisation entrusted with upholding the Competition Act. Its responsibilities included monitoring mergers and acquisitions and, more importantly, creating a climate of robust competition in the Indian market.

The Competition Commission of India functions under a complex set of goals. The most important of these are the safeguarding of trade freedom, the development and maintenance of competition, the avoidance of actions that might harm it, and the protection of consumer interests[10].

Comparable regulatory agencies with comparable missions operate on a global scale. Examples include the Federal Trade Commission (FTC) in the US, and the European Commission in the EU. In their different countries, these organisations play a crucial role in establishing and implementing competition laws.

The emergence of artificial intelligence (AI) and the pervasiveness of algorithmic decision-making in the twenty-first century have caused a profound change in the dynamics of

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[7]Monopolies and Restrictive Trade Practices Act, 1969, Act No. 54 of 1969, 56 Official Gazette 186 (1969).
[8]Competition Act, 2002, Act No. 12 of 2003.
[9]Competition Commission of india, Government of India - CCI, https://cci.gov.in/about-us (last visited Jan 29, 2024).
[10]Id.

competition law.[11] Due to algorithms' inherent autonomy and ability for learning, there is a growing concern over algorithmic self-preference, which might result in biassed market results.[12]

The complex relationship between market dynamics and algorithms presents significant obstacles for established frameworks of competition law[13]. By their very nature, algorithms optimise results based on past data; nonetheless, this very process of optimisation may unintentionally lead to biassed choices[14]. Such prejudices have the ability to skew market dynamics in favour of particular organisations, upsetting the balance of competition and possibly impeding the admission of new firms.

The intricate structure of AI-powered decision-making procedures presents new difficulties for oversight organisations like the CCI. Determining when algorithmic self-preference occurs, understanding the underlying mechanisms, and developing appropriate regulatory remedies become critical issues in guaranteeing competition law's sustained effectiveness in the face of unrelenting technological innovation.[15]

The complicated relationship between competition law, market dominance, and power abuse is made clear by the General Court's rejection of Google's lawsuit and the EU Commission's 2017 decision to sustain the €2.42 billion fine.[16] This is especially true in the context of internet search engines. This ruling, which concerns Google's alleged abuse of dominance in favour of its comparison-shopping service, is relevant to the larger conversation on algorithmic self-preference and its consequences for fair competition.

The Commission's claim that Google deliberately altered search results to elevate its own Google Shopping Service while demeaning other comparison-shopping services is at the centre of this legal dispute. The particular method was to show Google Shopping results prominently at the top of the overall search results page, in a way that attracted users' attention and set it apart from competing comparison services. Due to this calculated

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[11]Motta Self-preferencing and foreclosure in digital markets: theories of harm for abuse cases. *International Journal of Industrial Organization*, p.102974, (2023).
[12]Id.
[13]Petrucci, Self-preferencing in the EU: a legal and policy analysis of the Google Shopping case and the Digital Markets Act. *Competition Law Journal*, *22*(1), pp.18-29, (2023).
[14]Colomo, Self-preferencing: yet another epithet in need of limiting principles. *World Competition*, *43*(4), (2020).
[15]Padilla,Self-Preferencing in Markets with Vertically Integrated Gatekeeper Platforms. *The Journal of Industrial Economics*, *70*(2), pp.371-395, (2022).
[16]Id.

positioning and algorithmic adjustments that gave Google an edge over rivals, customers were more likely to remain loyal to Google's product, resulting in a dominance cycle that was hard to break.

Based on the self-preferencing argument, the Commission decided to punish Google because it believed that Google's activities qualified as an abuse of dominance in accordance with EU antitrust laws.[17] The contention centred on the deliberate manipulation of search results and the exploitation of consumers' dependence on defaults in order to benefit Google's own service. The seven-year inquiry brought to light the Commission's examination of Google's market practices and posed important queries regarding the relationship between competition law, namely Article 102 TFEU, and self-preferencing.

The ruling is a reflection of the larger discussion in competition law about self-preferencing.[18] A common argument made by those who disagree with the Commission's position is that forbidding self-preferencing runs counter to the strict guidelines for gaining access to a dominating undertaking's infrastructure. Critics disputed the idea that self-preferencing ought to be considered anticompetitive, arguing that customers may gain from Google's actions.

Within the continuing discussion about algorithmic self-preference, this ruling provides a practical illustration of the difficulties regulatory agencies have when attempting to adapt to the changing digital market environment. The case underlines how competition law must change to reflect the complexity of algorithm-driven platforms, where services' strategic placement can have a big influence on market dynamics. Additionally, it draws attention to the possible dangers of self-preferring by illuminating the ways in which powerful entities might abuse their advantages at the expense of impartial competition and customer choice.
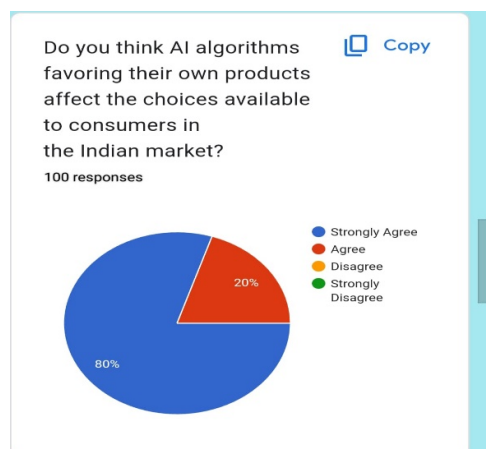
The implications of this ruling will be further explored in the context of algorithmic self-preference as we go deeper into the upcoming chapters. The authors will make links between the theoretical discussions and real-world enforcement actions in response to the difficulties presented by dominant online platforms.

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[17]Case ASE AT.39740 Google Search (Shopping), (2017).
[18]Petrucci, Self-preferencing in the EU: a legal and policy analysis of the Google Shopping case and the Digital Markets Act. *Competition Law Journal*, *22*(1), pp.18-29, (2023).

In India's quickly changing artificial intelligence (AI) ecosystem, the convergence of innovation and antitrust issues raises significant considerations for regulators, enterprises, and consumers alike. As AI technologies become more widely incorporated into numerous businesses, worries about algorithmic self-preference and its possible anticompetitive influence have surfaced as hot topics of debate. To provide light on these issues, we conducted a study. This study sought to evaluate public views and opinions on the effect of AI algorithms that favor their own goods, the importance of overseas ideas in determining India's rules, and the perceived impact on innovation inside Indian industry. The study was completed with a participation of 100 people. The data analysis below summarizes the various perspectives uncovered by this survey, providing valuable insights into the current attitudes toward antitrust challenges in India's AI landscape and the potential need for regulatory interventions to address algorithmic self-preference.
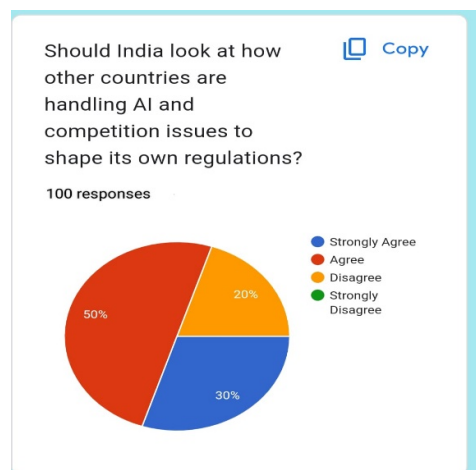
The survey question results demonstrate a clear consensus, with 80% strongly believing that
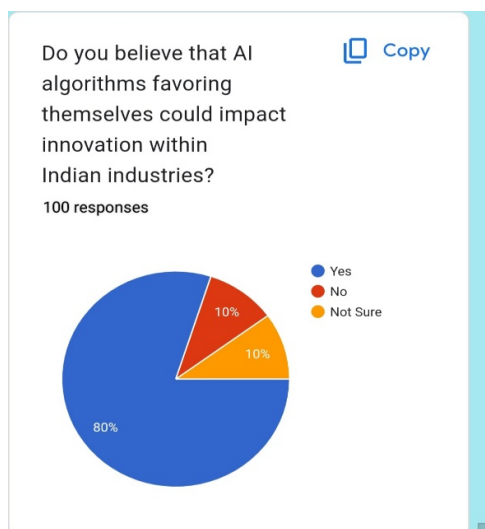

AI algorithms favoring their own items have a substantial influence on customer purchasing decisions. The other 20% express a different viewpoint, which might indicate a confidence in the neutrality or limited effect of AI algorithms on consumer decisions. Overall, our findings highlight the general impression of AI's significant involvement in impacting consumer decisions, calling for governmental oversight to promote fair competition and diversified market options.

The poll finds a considerable tendency among respondents to seek lessons from other nations when designing AI and competition rules in India. Half of the participants (50%) agreed, with a significant proportion (30%) strongly agreeing that India should adopt foreign approaches. On the contrary, 20% opposed the idea, indicating a range of views on the extent to which India should draw inspiration from foreign methods and stating that
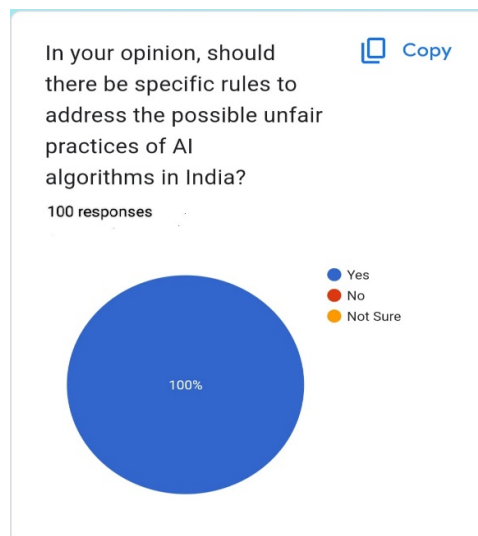
India should be the country who should take a lead on formation of the regulations of the same. These findings highlight the significance of taking a nuanced and educated approach to developing successful AI and competition legislation in India, taking into account both domestic and foreign experiences.

Do you believe that AI algorithms favoring themselves could impact innovation within Indian industries?

100 responses

- Yes
- No
- Not Sure

80%
10%
10%

The poll results show a high consensus among participants on the possible impact of AI algorithms that favor themselves on innovation in Indian sectors. A vast majority, 80%, believed that such approaches may have a detrimental impact on innovation. In contrast, 10% disagreed with this view, indicating a smaller but still considerable number that sees no meaningful influence on innovation. A further 10% indicated doubt about the subject. These findings illustrate respondents' widespread worry about the possible negative consequences of AI self-preferencing on innovation in Indian businesses, indicating a need for more investigation and consideration in the creation of AI-related policies.

The survey's last question questioned participants if specific standards should be developed to address suspected unfair conduct by AI algorithms in India. Without giving specific response percentages, the data shows that some principles are being considered. This problem is a key indicator of whether particular rules are required to regulate AI systems and combat seeming unfair conduct. The yes responses indicate that respondents understand the significance of specific rules to ensure ethical and equitable AI use in India.

In your opinion, should there be specific rules to address the possible unfair practices of AI algorithms in India?

100 responses

- Yes
- No
- Not Sure

100%

CHAPTER II: GLOBAL LEGAL LANDSCAPE: A CONTEMPORARY OVERVIEW

In the age of Internet commerce, artificial intelligence has emerged as a driving force in product promotion and sales. Intermediaries, who serve as critical intermediaries between customers and merchants, use the potential of AI's self-preserving data to market their items strategically. This phenomenon has far-reaching effects, impacting consumer decisions and changing the competitive environment. In this article, we will look at how intermediary AI-driven actions influence market competition and the legal implications of these advancements under India's Competition Act. Online platforms use artificial intelligence, which can learn and adapt, to create a tailored customer experience. AI algorithms on these platforms highlight certain items by utilizing self-preserving data, bringing them to the forefront. This strategic advertising draws customers and creates market stability by offering preferred treatment to items affiliated with the middleman. The Competition Act of India is the foundation for regulating and guaranteeing fair competition in the market. However, the increasing incorporation of AI raises issues that traditional regulation may not adequately address. Ravneet Kaur, the Chairperson of the Competition Commission of India (CCI), has expressed concerns over discriminatory pricing and anti-competitiveness in the digital realm. This emphasizes the importance of taking a sophisticated legal strategy to navigate the complications of AI-driven activities. While India considers the implications of AI for competitiveness, the European Union has taken a pioneering step by passing the AI Act. This law intends to prevent possible AI abuses and provide a framework for worldwide governance[19]. The disparity in methods highlights the complexities of regulating AI worldwide and the need for each country to customize its legislation to its own circumstances. As AI continues to disrupt the economic landscape, India's lack of transparent laws becomes increasingly concerning. However, in the Indian context, the lack of clear legislation matched to the complexities of AI applications has become a significant worry. [20]The worldwide push toward AI regulation, as represented by efforts such as the European

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[19]EU AI act: First regulation on artificial intelligence: News: European parliament, EU AI Act: first regulation on artificial intelligence | News | European Parliament (2023),
https://www.europarl.europa.eu/news/en/headlines/society/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence (last visited Jan 29, 2024).
[20]Explained: What is the European Union AI Act, and it may mean for Chatgpt - Times of India,THE TIMES OF INDIA (2023), https://timesofindia.indiatimes.com/gadgets news/explained-what-is-the-european-union-ai-act-and-it-may-mean-for-chatgpt/articleshow/98908469.cms (last visited Jan 29, 2024).

Union's AI Act, highlights the need for India to build a comprehensive legal framework to regulate the ethical use of AI and avoid any abuses.

The Treaty on the Functioning of the European Union (TFEU)[21] is a cornerstone in establishing the legal framework for competition concerns in the European Union. The TFEU's provisions establish the framework for competition policy, with the primary goal of avoiding anticompetitive behaviour and guaranteeing the internal market's successful operation. Specifically, Article 101[22] of the TFEU forbids agreements and actions that might distort competition inside the EU. It focuses on cooperation between corporations that might possibly limit competition, highlighting the significance of fair and open markets. This rule is especially relevant in the context of AI, as cooperation and agreements between organizations that use AI technology may have an influence on competitive dynamics. Article 102 of the TFEU addresses abuses of dominant market positions. In the realm. This rule is especially important in the field of artificial intelligence, because select corporations may wield tremendous power owing to the nature of their algorithms and data access. It bans corporations from abusing their dominating positions in ways that might hinder competition, guaranteeing a level playing field for enterprises that use AI technology. This demonstrates the TFEU's commitment to ensuring a competitive environment that encourages innovation, defends consumer interests, and opposes undue concentration of market power. Using the objectives outlined in the TFEU, the EU seeks to strike a careful balance between supporting innovation in the AI environment and maintaining fair and open competition in the internal market.

Globally, a trend toward preventative measures is gaining ground. Section 19a of German antitrust code began using a new competition instrument in 2021. Globally, a trend toward preventative measures is gaining ground. Notably, the key verdict in the Google Shopping (2017) case[23] highlighted self-referencing methods. The European Commission found Google guilty of exploiting its dominant position to impede competition by imposing restrictive practices on competing shopping platforms, giving it a competitive advantage. The Commission levied a €2.4 billion fine, claiming that Google's activities gave its comparison-shopping service a considerable advantage over rivals by providing it prominent placement while demoting competitors. This practice has spread to other jurisdictions, as seen by the

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[21]The Treaty on the Functioning of the European Union,(1958).
[22]The Treaty on the Functioning of the European Union, art.101, (1958).
[23]Case ASE AT.39740 Google Search (Shopping), (2017).

case of **Matrimony.com Limited v. Google**[24] and Others in India. The Competition Commission of India (CCI) found Google's actions in breach of Section 4 of the Competition Act, notably citing search bias due to the prominent positioning of Google's Flights Unit on the results page. This demonstrates a global concern and legislative response to platforms preferring their own services, which disrupts fair competition.

Germany, a crucial member of the European Union, has devised a novel legal framework to successfully meet the difficulties posed by AI in the field of competition law. This particular approach emphasizes data-driven technologies, demonstrating Germany's commitment to fine-tuning its competition rules to match the demands of the digital age. One important aspect of Germany's legal framework is its competition laws, specifically the Act Against Restraints of Competition (ARC). The ARC, with recent updates, acknowledges the changing world of AI and data-driven technologies. Section 19a of German antitrust code[25] began using a new competition instrument in 2021. It lays the way for a case-by-case restriction of self-preferencing acts by platforms, significant for competition across markets, Germany, a key member of the European Union, has proactively developed a unique legislative framework to successfully address the issues posed by AI in the field of competition law. This distinct framework, with a strong emphasis on data-driven technology, underlines Germany's commitment to fine-tuning its competition legislation to meet the needs of the digital era. One important feature in Germany's legal structure is found in its competition laws, namely the Act Against Restraints of Competition (ARC).

One important feature in Germany's legal structure is found in its competition laws, namely the Act Against Restraints of Competition (ARC). The ARC, with its recent changes, recognizes the changing world of AI and data-driven technology. Section 19a of the ARC tackles the issue of market power abuse by providing a particular legal procedure for scrutinizing and curtailing anticompetitive activity resulting from the employment of AI. The Bundeskartellamt, the German competition authority, has played a key role in interpreting and enforcing these law restrictions. Recognizing the unique issues offered by data-driven business models, particularly on digital platforms, the Bundeskartellamt has actively participated in discussions on the intersection of data and competition law. The authorities

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[24]Matrimony.com Limited v. Google LLC and Others, CCI, Case No. 07 and 30 of 2012.
[25]Section 19a, German Competition Act, 2021

has particularly highlighted concerns over the concentration[26]. The authority has especially addressed issues about data concentration and market dominance. Section 18 of the ARC authorizes the Bundeskartellamt to intervene when corporations, particularly those that use AI and data-driven technology, engage in actions that distort competition. This includes actions against corporations that may use their access to large databases to obtain an unfair competitive advantage or obstruct market access for others[27]. Furthermore, debates generated by the Bundeskartellamt have raised the question of whether competition legislation needs to be strengthened to adequately handle difficulties posed by the junction of AI and data concentration. This commitment to adaptation is represented in Section 32e of the ARC, which authorizes the creation of a Digital Markets Unit. This section is responsible for handling competition. This section is responsible for resolving competitive problems in digital marketplaces, such as those raised by AI applications and data-driven business models.

The Organisation for Economic Cooperation and Development (OECD) is in the forefront of shaping competition legislation for the digital age, having specified particular measures addressing the complex connection between algorithms and competition. In its study on competition policy in the digital age, the OECD emphasizes the need for strong recommendations to reduce collusion risks enabled by algorithms. Specific clauses advocate increasing openness in algorithmic decision-making processes in order to detect and prevent collusion efficiently. Furthermore, the research recommends for adaptive regulation, highlighting dynamic merger control methods to assess the competitive consequences of mergers involving enterprises that use algorithms[28]. Specific rules are offered to help competition authorities examine and intervene in circumstances where algorithms lead to anti-competitive agreements between market participants.

The paper also discusses algorithmic pricing practices, proposing mechanisms for evaluating and regulating pricing algorithms to prevent price fixing or discriminatory pricing that might impair competition. The OECD's insights extend to big data, highlighting the strategic importance of data and suggesting measures to ensure equitable access and prevent monopolistic behaviour. Specific recommendations are advised for competition authorities to

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[26] ARTIFICIAL INTELLIGENCEARTIFICIAL INTELLIGENCE - LAW OVER BORDERS - THE GLOBAL LEGAL POST (2024), https://www.globallegalpost.com/lawoverborders/artificial-intelligence-1272919708/germany-623281725 (last visited Jan 29, 2024).
[27] Id.
[28] Big Data: Bringing competition policy to the Digital Era - OECD, COMPETITION POLICY IN THE DIGITAL AGE (2022), https://www.oecd.org/competition/big-data-bringing competition-policy-to-the-digital-era.htm (last visited Jan 25, 2024).

handle difficulties posed by data-driven monopolies, supporting a competitive environment through equitable data access. On the European front, the European Union (EU) has proposed a comprehensive approach to artificial intelligence (AI), focusing on a risk-based regulatory framework. Specific requirements classify AI applications based on their risk level, allowing for specific controls for higher-risk applications[29]. Prohibitions on specific actions, such as AI systems influencing persons or endangering basic rights, are stated, indicating the EU's commitment to ethical AI deployment. Furthermore, the EU approach emphasizes the significance of data governance and access, with laws designed to facilitate data exchange and accessibility while guaranteeing compliance with privacy and competition legislation. These OECD and EU regulations show a collaborative effort to tailor competition policy to the difficulties of the digital era. They aim to assure fair and transparent competition in the rapidly changing technology world, tackling difficulties brought by algorithms, big data, and the deployment of artificial intelligence lays the way for a case-by-case limitation on self-preferencing activities by platforms, relevance

Furthermore, responsibility and liability problems arising from intermediaries' exploitation of AI add another degree of complication. As intermediaries take on duties similar to merchants, there is a risk of avoiding accountability by attributing decisions to the autonomous character of AI algorithms. Given these issues, the need for explicit norms on intermediaries' obligations and liabilities becomes even more pressing and strict in its essence, and should be established the companies and entities misusing the same shall be held strictly liable for the conduct. Using insights from OECD and EU statistics on AI regulation, it is evident that developing clear and thorough recommendations is critical. Such principles not only prevent intermediaries from manipulating algorithms to gain unfair competitive advantages, but they also address responsibility and liability issues[30]. This multidimensional strategy is critical for ensuring fairness, transparency, and integrity in the competitive environment of AI-driven online markets.

CHAPTER III: NAVIGATING CHALLENGES: INNOVATIVE SUGGESTIONS AND SOLUTIONS:

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[29]SUMMARY OF DISCUSSION OF THE HEARING ON THE RELATIONSHIP BETWEEN ... (2023), https://one.oecd.org/document/DAF/COMP/M(2023)1/ANN1/FINAL/en/pdf (last visited Jan 26, 2024).
[30] Algorithmic competition - OECD, OECD.ORG (2023), https://www.oecd.org/competition/algorithmic-competition.htm (last visited Jan 26, 2024).

Therefore, based on the discussion the authors propose the following solutions:

Algorithmic Audits:

To guarantee that businesses are abiding with competition regulations and reduce biases in their algorithmic decision-making processes, algorithmic audits are a proactive approach. To promote fair competition, this entails hiring impartial third parties to carry out in-depth assessments of businesses, especially those with significant market domination.

To ensure an objective and fair analysis of the algorithms under investigation, these auditing institutions' independence and objectivity are essential. Through the removal of any associations or conflicts of interest, the audits aim to offer an impartial evaluation of how algorithms affect market dynamics and fair competition.

Equal treatment of Competitors:

Equal treatment for rivals in search results is a legal requirement intended to promote fair competition and avoid giving a platform's exclusive services unwarranted benefits. In order to prevent search results algorithms from showing biases favouring the platform's own products over those of rivals, rules requiring a fair playing field for all services must be enforced.

In order to accomplish this, certain rules are set forth to instruct search engines on how to handle different kinds of services. These standards provide the parameters for search result display, visibility, and ranking, acting as a road map. The goal is to uphold the principles of fair competition by stopping any discriminatory actions that would provide the platform's exclusive services with an unfair advantage.

Feedback Loop with Regulators:

A crucial element in guaranteeing the effectiveness of algorithmic audits and regulatory supervision is the creation of a feedback loop between auditors and regulatory organisations. By providing relevant regulatory authorities with relevant information obtained from audits, this structured communication method helps them make educated judgements and, where needed, take appropriate enforcement action.

Under this cooperative strategy, auditors serve as intermediaries of important information, giving regulatory agencies a thorough grasp of the results of algorithmic audits. This disclosed data includes information about algorithmic transparency, compliance with fair competition guidelines, and any instances of prejudice or self-preference that have been found. By encouraging this information sharing, regulatory agencies are able to get the data they need to assess compliance levels and act quickly to address any anomalies or anticompetitive behaviour.

Enforcement Mechanism:

The effectiveness of algorithmic audits in guaranteeing adherence to fair competition rules is contingent upon the implementation of strong enforcement measures. If these audits uncover non-compliance, it becomes necessary to create a structure that precisely and clearly applies sanctions, acting as strong disincentives to prevent anti-competitive behaviour in any form.

The precise specification of the consequences for infractions is a crucial component of enforcement procedures. There should be no opportunity for misunderstanding in the description of these sanctions. The goal is to provide a clear-cut, foreseeable punishment for businesses that violate the rules of fair competition or use algorithms that display biases or self-interest.

Enforcing penalties for non-compliance acts as a potent disincentive, underscoring the significance of upholding fair competition rules and algorithmic openness. Regulatory agencies effectively communicate that deviating from established rules will not be accepted by laying out the consequences in detail. In addition to motivating businesses to match their operations with legal requirements, this creates a structure that protects the integrity of the online market.

In line of the same, following amendments in Section 3[31] which in order to prohibit anti-competitive agreements in the Indian market, provides a crucial foundation. This section prohibits businesses, groups, or people from entering into agreements that might have a significant negative impact on competition. It does this by establishing a comprehensive set of measures that are intended to promote fair competition. This ban covers a wide variety of contracts, such as those pertaining to the creation, procurement, distribution, storage,

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[31]Competition Act, 2002, Act No. 12 of 2003, § 3.

purchase, or management of products or services. In addition, this reinforces the statutory position by making agreements unenforceable, providing a strong disincentive to actions that harm competition. A presumption clause is included in this section, classifying some agreements as having a negative impact on competition. Interestingly, it provides an exception for a presumption clause is included in this section, classifying some agreements as having a negative impact on competition. Interestingly, it creates a niche exception for joint ventures that improve productivity, demonstrating a sophisticated strategy to promote efficient and cooperative corporate practices.

And in Section 4[32] of the act which provides for the misuse of dominating position is covered under Section 4 of the Competition Act, which is essential to preserving competition in the Indian market. This provision establishes a categorical ban that prevents organisations and businesses from abusing their dominating market position. This clause lays the groundwork for prohibiting anti-competitive behaviour that could impede honest competition.

Moreover, it offers a thorough explanation of what exactly qualifies as the misuse of a dominating position. It lists many actions that might be considered abusive if carried out by a company or organisation. These include setting unreasonable rates, including using predatory pricing techniques, and imposing unfair or discriminatory terms on the sale or purchase of products or services.

 (1) Explicit Inclusion of Algorithmic Self-Preference:

The authors propose to amend Section 3(1) to explicitly include agreements involving algorithmic self-preference within the definition of "anti-competitive agreements".

The revised clause may read as follows: "No enterprise, association of enterprises, or person shall enter into any agreement, including algorithmic self-preferencing practices, in respect of production, supply, distribution, storage, acquisition, or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India."

 (2) Definition of Algorithmic Dominance:

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[32]Competition Act, 2002, Act No. 12 of 2003, § 4.

The authors further propose to amend Section 4(a) to include a definition of algorithmic dominance. The revised clause may read as follows:

"(a) 'Dominant position' means a position of strength, enjoyed by an enterprise, including algorithmic dominance, in the relevant market in India, which enables it to operate independently of competitive forces prevailing in the relevant market or affect its competitors, consumers, or the relevant market in its favor through the use of artificial intelligence or algorithmic systems."

(3) Algorithmic Transparency Requirements:

Furthermore, it is necessary to introduce a new subsection stating self-preferencing AI algorithms for dominant enterprises are unfair and discriminatory. This can be added after Section 4(a)(ii) and may read as follows:

"(iii) algorithmic dominance"

(4) Dynamic Definition of Predatory Pricing in the Digital Context:

Moreover, add a dynamic definition of predatory pricing in the digital context to Section 4(b), taking into account the function of algorithms. The amended clause could read as follows: "(b) 'Predatory price' means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate competitors, taking into account the role of algorithms and automated pricing strategies in the digital context."

CONCLUSION:

Concerns regarding antitrust issues have been raised by the incorporation of Artificial Intelligence (AI) into several businesses in India, a country with a fast-changing technology landscape. There are significant concerns about fair competition, market dynamics, and possible anti-competitive behaviour raised by the introduction of AI-driven algorithms into intermediate platforms. Even while the goal of these algorithms is to maximise results, there is a rising chance that they would unintentionally favour platform operators or inventors,

which might impede innovation and make it more difficult for smaller companies to enter the market.

While AI's capacity for self-learning is one of its most notable qualities, it also raises the possibility of bias, which might favour some players and sway customer decisions. Prejudiced algorithms driven by past data create a feedback loop that solidifies the supremacy of particular goods or entities. Since India's current competition rules predate the digital revolution, they might not effectively handle the problems brought on by quickly developing technology like artificial intelligence.

This research article examined antitrust issues raised by the growing use of algorithmic applications, acknowledging the need for a revised legal framework that specifically addresses the complexities of AI-driven marketplaces. Algorithmic audits, equal treatment for competitors, a feedback loop with regulators, and strong enforcement mechanisms are some of the suggested answers to these problems.

It is suggested that Section 3 of the Competition Act be amended to conform to these solutions. It is advised that algorithmic self-preference be expressly included in the definition of anti-competitive agreements. The legal framework can also be improved by defining algorithmic dominance in Section 4 and adding a dynamic concept of predatory pricing in the digital context.

In conclusion, in order to maintain fair competition, innovation, and consumer welfare, the legal system must be adjusted to the difficulties presented by AI-driven marketplaces. The goal of the suggested fixes and changes is to provide a legal framework that guarantees the ethical and open application of AI algorithms in business. This proactive strategy aims to achieve a balance between the upkeep of a fair and competitive economic environment and technological improvement.