



INTERNATIONAL JOURNAL FOR CORPORATE AND COMPETITION LAW [IJCCL]

2024 || ISSN. 3049-3560 (Online) || Volume 1 Issue 4



This Article is brought to you for “free” and “open access” by the International Journal for Corporate and Competition Law. It has been accepted for inclusion in the Journal after due review.

To submit your Manuscript for Publication at International Journal for Corporate and Competition Law, kindly email your Manuscript at ijccl.official@gmail.com.

E-COMMERCE IN INDIA: A LEVEL PLAYING FIELD OR A TITLED ARENA? REIMAGINING COMPETITION LAW FOR THE DIGITAL AGE

Tamanna Das¹ & Rakshith Mukund²

ABSTRACT

The meteoric rise of e-commerce in India presents a dual narrative: one of unprecedented consumer convenience and economic dynamism, and another of mounting concerns over market concentration and the erosion of fair competition. This paper critically examines whether the Indian e-commerce landscape constitutes a level playing field or a tilted arena favouring dominant digital platforms. It argues that the confluence of algorithmic opacity, data-driven network effects, and behavioural manipulation has created a significant structural 'tilt' that the existing ex-post framework of the Competition Act, 2002, is ill-equipped to address. The analysis moves beyond traditional antitrust paradigms to dissect novel forms of harm, including algorithmic collusion, self-preferencing, and the use of 'dark patterns' as a form of non-price abuse. It re-theorises platform power by applying the 'essential facilities' doctrine and analysing 'data moats' as insurmountable barriers to entry. The paper further evaluates the profound socio-economic consequences of this market structure on small and medium enterprises (SMEs) and the labour conditions of gig economy workers. Through a critical evaluation of India's proposed Digital Competition Bill and by drawing comparative lessons from the European Union's Digital Markets Act, this paper concludes with a call for a refined, hybrid regulatory model. Such a model must balance proactive ex-ante rules with robust ex-post enforcement, supported by significantly enhanced institutional capacity at the Competition Commission of India, to forge a truly fair and contestable digital future.

Keywords: E-Commerce, Competition Law, Digital Markets, Consumer Protection, Digital Competition Bill, Algorithmic Collusion, Dark Patterns, Gatekeeper Regulation, Essential Facilities Doctrine, Data Moats.

¹ The author is student of law at Presidency University, Bangalore.

² The co- author is student of law at Presidency University, Bangalore.

INTRODUCTION

The Indian e-commerce sector has expanded at an unprecedented rate, becoming a principal engine of economic activity and fundamentally altering the landscape of commerce. Driven by rising internet penetration, favourable foreign direct investment regulations, and rapid technical adoption, the digital bazaar has delivered indisputable benefits, such as more consumer choice, location-agnostic delivery methods, and new ways for firms to reach customers.³ This growth, however, has been accompanied by a growing chorus of discontents, raising a critical and urgent question for policymakers and regulators: Does this digital transformation promote a level playing field for all participants, or is the very architecture of the digital market inherently tilted in favour of a few dominant gatekeepers?

This study demonstrates the significant inadequacy of established antitrust paradigms in the face of platform economics. Competition law, designed for the physical world, is founded on assumptions about market definition, customer welfare, and company behaviour that are fundamentally challenged by platform-based, data-driven business models. In digital markets, competition is not a static state but a dynamic process characterised by powerful network effects, economies of scale, and the strategic leveraging of data, which can cause markets to 'tip' swiftly and irreversibly in favour of an incumbent.⁴ Market dominance, collusion, and consumer harm show themselves in unique, often opaque, ways that put existing legal frameworks' analytical and enforcement capabilities to the test.

This paper argues that the confluence of algorithmic opacity, data-driven network effects, and behavioural manipulation has created a demonstrably 'tilted' playing field in Indian e-commerce. The Competition Act, 2002⁵, with its reactive, *ex-post* approach, has proven inadequate to address these new challenges in a timely and effective manner. While the proposed Digital Competition Bill (DCB)⁶ is a necessary and welcome move toward a proactive, *ex-ante* framework, it needs significant revision to achieve a delicate balance between preventing anti-competitive behaviour and encouraging innovation. The report contends that a sophisticated, hybrid regulatory strategy, backed up by increased institutional capacity at the Competition Commission of India (CCI), is required for a sustainable and

³CCI's MARKET STUDY ON E-COMMERCE: THE WAY FORWARD, accessed September 22, 2025, <https://www.rfmlr.com/post/cci-s-market-study-on-e-commerce-the-way-forward>.

⁴Navigating competition law in E-commerce: Challenges and implications of the digital economy, accessed September 22, 2025, <https://www.criminallawjournal.org/article/89/4-1-32-544.pdf>.

⁵ The Competition Act, 2002, No.12, Act of Parliament (India), 2002.

⁶Committee on Digital Competition Law Report (March 2024) published by PRSIndia.

equitable digital economy.

LITERATURE REVIEW

The Existing Legal Framework and Its Limitations

The development of the Competition Commission of India's interaction with the e-commerce sector indicates a regulator dealing with a quickly changing economic landscape. This journey, from initial observation to direct involvement, has highlighted the structural limitations of the Competition Act of 2002, which is an ex-post legislative framework intended for a pre-digital age. The challenges in defining relevant markets, assessing dominance, and remedying harm in a timely fashion have underscored the need for a fundamental rethink of competition policy in India.⁷

The CCI's first comprehensive foray into the digital landscape was its 'Market Study on E-commerce in India', released in January 2020.⁸ This qualitative, information-gathering exercise confirmed that online commerce was gaining critical importance and identified several key issues that could hinder its pro-competitive potential. The core findings revolved around a lack of 'platform neutrality', the prevalence of deep discounting, the use of exclusive contracts, and a significant bargaining power imbalance between platforms and their business users. At the time, the CCI's study emphasised self-regulation, which proved insufficient to solve the platform economy's basic power imbalances.⁹

The theoretical concerns raised in the market study immediately took real form in formal studies. In January 2020, the CCI launched an inquiry against Amazon and Flipkart, the two largest companies in the Indian e-commerce business. The charges are varied, including preferential treatment for vendors in which the platforms own equity, exploitative deep discounting methods, and exclusive launch agreements that limit the market to other shops. The continuous nature of these investigations underscores the "pacing problem" inherent in the ex-post methodology; launched in 2020, the probe has been entangled in procedural and

⁷[Analysis] Parliament's Standing Committee Report Calls for Strengthening CCI and Proposes Refinements in the Digital Competition Bill | nasscom | The Official Community of Indian IT Industry, accessed September 22, 2025, <https://community.nasscom.in/communities/public-policy/analysis-parliaments-standing-committee-report-calls-strengthening-cci>.

⁸The Resurrection of Essential Facilities Doctrine and Its Applicability ..., accessed September 22, 2025, <https://www.competitionpolicyinternational.com/wp-content/uploads/2016/03/The-Resurrection-of-Essential-Facilities-Doctrine.pdf>.

⁹ICLE Comments on India's Draft Digital Competition Act, accessed September 22, 2025, <https://laweconcenter.org/resources/icle-comments-on-indias-draft-digital-competition-act/>.

legal obstacles, with a final verdict still awaited years later.

The most fundamental challenge in implementing the Competition Act of 2002 in e-commerce is its core doctrinal principles, particularly the definition relevant market and the assessment of 'dominance'. These notions were designed for traditional, single-sided markets and do not integrate well with the complex, multi-sided nature of digital platforms. A multi-sided platform serves two or more distinct but interdependent user groups, such as buyers and sellers, where the value to one group depends on the number of users in the other (indirect network effects). This structure creates significant challenges for market definition, as traditional tests are difficult to apply when services on one side are offered for free.¹⁰ The CCI has often grappled with whether to define the relevant market as a single, unified market or as separate markets for each user group. Academic analysis suggests that the CCI's tendency to define the market from only one side can lead to an incomplete assessment, potentially overlooking competitive harms.¹¹ Assessing dominance is equally complex. Beyond traditional metrics like market share, a proper assessment in digital markets must account for factors like network effects, economies of scale, access to data, and high switching costs for users, all of which can create formidable entry barriers.¹²

Re-theorising Platform Power

The novel harms perpetrated through algorithms are symptoms of a deeper structural reality: the emergence of a few dominant platforms as indispensable 'gatekeepers' of the digital economy. To effectively address these harms, competition law must move beyond analysing individual acts and develop new theories to conceptualise and constrain the underlying market power of these intermediaries.

One such framework is the 'essential facilities' doctrine, a concept in competition law that traditionally applied to physical infrastructure. It holds that a dominant firm controlling a facility indispensable for its competitors to do business has an obligation to grant access on fair, reasonable, and non-discriminatory terms. In the digital age, this doctrine is experiencing

¹⁰Impact of e-commerce on SMEs in India - KPMG agentic corporate services, accessed September 22, 2025, <https://assets.kpmg.com/content/dam/kpmg/pdf/2015/10/Snapdeal-Report -Impact-of-e-Commerce-on-Indian-SMEs.pdf>.

¹¹Digital Competition Law - Committee Reports, accessed September 22, 2025, <https://prsindia.org/policy/report-summaries/digital-competition-law>.

¹²Navigating competition law in E-commerce: Challenges and implications of the digital economy, accessed September 22, 2025, <https://www.criminallawjournal.org/article/89/4-1-32-544.pdf>.

a renaissance as a powerful analytical tool for understanding the role of major e-commerce platforms. An argument can be compellingly made that platforms like Amazon and Flipkart function as modern, virtual essential facilities. For millions of small and medium enterprises, access to the vast customer base and established logistics networks of these marketplaces is indispensable for participating in the national e-commerce market. Duplicating such a facility, with its powerful two-sided network effects, is practically impossible for a new entrant. Under this framework, anti-competitive conduct such as arbitrary delisting of sellers or imposition of unfair contract terms can be framed not just as unfair business practices, but as an abusive denial of access to an essential facility.¹³ International jurisprudence is also evolving, with European cases suggesting a move away from a strict 'indispensability' test, particularly when the facility was designed from the outset to grant access to third parties.

The power that transforms a platform into an essential facility is largely derived from one critical asset: data. In the digital economy, data is the core resource that creates a formidable barrier to entry, often described as a 'data moat', around incumbent platforms. This moat is built and deepened through a self-reinforcing feedback loop known as data-driven network effects. More users on a platform generate more data, which is then used to improve the platform's services. The improved service, in turn, attracts even more users, who generate yet more data, perpetuating the cycle. A new entrant, lacking a comparable dataset, cannot offer a service of similar quality and thus struggles to attract a critical mass of users. The Competition Commission of India has begun to formally recognise the competitive significance of data. In its analysis of combinations and in the Meta/WhatsApp¹⁴ investigation, the CCI explicitly identified data sharing as a practice that could create entry barriers and deny market access to competitors, treating data privacy as a non-price parameter of competition.

METHODS AND RESULTS

This research paper employs a qualitative analytical methodology. The approach entails a doctrinal examination of key legal and regulatory sources, such as the Competition Act of 2002, the draft Digital Competition Bill of 2024, and official reports and market studies released by the Competition Commission of India (CCI). This is reinforced by a thorough

¹³Industry endorses withdrawal of draft Digital Competition Bill, accessed September 22, 2025, <https://www.storyboard18.com/digital/industry-endorses-withdrawal-of-draft-digital-competition-bill-43211.htm>.

¹⁴Competition Appeal No. 1 & 2 of 2025 (WhatsApp LLC v. CCI).

examination of key CCI case law and ongoing investigations against major e-commerce platforms. To investigate novel types of anti-competitive harm, the research draws on findings from secondary academic literature spanning digital economics, competition law theory, and computer science. In addition, a comparative legal examination of international frameworks, including the European Union's Digital Markets Act, is utilised to contextualise the Indian discussion and offer policy recommendations. The socioeconomic impact is calculated by combining quantitative data with findings from empirical studies on Indian retail marketplaces and labour circumstances.

New Frontiers of Anti-Competitive Harm

The analysis uncovers new and subtle types of anti-competitive harm emerging from the algorithmic 'black box'. The most difficult of these is algorithmic collusion, in which pricing algorithms, even while functioning independently, learn to coordinate their behaviour in order to reach supra-competitive prices, thereby forming a cartel without verbal agreement. The literature cites numerous scenarios, ranging from algorithms serving as 'messengers' for human-led cartels to the 'digital eye' scenario, in which self-learning algorithms independently determine that cooperation is the best tactic.¹⁵ The latter scenarios pose a profound challenge to Section 3¹⁶ of the Competition Act, which requires an "agreement" or "concerted practice," concepts that are difficult to prove in the absence of human intent or communication.

A more immediate form of algorithmic harm is **self-preferencing**, a practice central to the business model of vertically integrated platforms that act as both player and referee. This occurs when a platform uses its control over search and recommendation algorithms to favour its own products or services over those of competing third-party sellers. The primary enforcement challenge is the 'black box' nature of these proprietary algorithms; without access to the underlying code, a regulator finds it extremely difficult to distinguish genuine optimisation from anti-competitive bias.

The third frontier of harm is the weaponisation of user interface design using 'dark patterns'.

¹⁵DETERMINATION OF THE RELEVANT MARKET IN COMPETITION LAW IN THE DIGITAL ECONOMY, PARTICULARLY RELATED TO ONLINE TRADING OF GOODS AND SERVICES ON DIGITAL PLATFORMS - A&CO Law Office, accessed September 22, 2025, <https://aco-law.com/articles/determination-of-the-relevant-market-in-competition-law-in-the-digital-economy-particularly-related-to-online-trading-of-goods-and-services-on-digital-platforms/>.

¹⁶The Competition Act, 2002, S.3, No.12, Act of Parliament (India), 2002

These are misleading design decisions buried in websites and apps that use cognitive biases to encourage users into behaviours they did not plan, such as making inadvertent purchases or finding it difficult to cancel a subscription. When deployed by a dominant platform, these manipulative practices can be construed as a form of non-price abuse of dominance under Section 4¹⁷ of the Competition Act, as they impose "unfair conditions" on consumers and can serve as an exclusionary tactic against competitors.¹⁸

Socio-Economic Reverberations of the Platform Economy

The concentration of power in the hands of a small number of e-commerce gatekeepers has far-reaching socioeconomic consequences. The story of e-commerce empowering Small and Medium Enterprises (SMEs) is paradoxical. While platforms provide access to a nationwide client base, this possibility frequently turns into a perilous dependency. Quantitative analysis gives a striking picture of this "tilt." A study of small offline sellers in Ahmedabad between 2015 and 2023 discovered a statistically significant decrease in their sales income, which was directly attributed to the growth of e-commerce.¹⁹ While traditional retail still accounts for the majority of sales in India, e-commerce has taken a commanding position in key categories such as mobile phones (55% of sales online) and a significant portion of apparel and footwear (20-22% online), threatening the viability of local brick-and-mortar stores. For SMEs that move online, they are frequently forced to compete directly with the platform's own private-label products and drastically discounted 'preferred sellers'.

The socio-economic impact is perhaps most acute for the millions of gig workers who form the backbone of e-commerce. The deliberate misclassification of these workers as 'partners' or 'independent contractors' rather than 'employees' relieves platforms of the need to offer basic labour rights, like as minimum wage, defined working hours, and social security. This is a systematic issue recognised by government entities like as NITI Aayog. Working conditions are often harsh, with low and volatile earnings, and management is dictated by opaque algorithms that enforce punishing deadlines, such as the '10-minute delivery' promise, compelling workers to take risks on the road. Studies have found that delivery workers

¹⁷The Competition Act, 2002, S.4, No.12, Act of Parliament (India), 2002.

¹⁸Market Definition for Multi-Sided Platforms: A Legal Reappraisal, accessed September 22, 2025, https://www.researchgate.net/publication/360052900_Market_Definition_for_Multi-Sided_Platforms_A_Legal_Reappraisal.

¹⁹EXPLAINER: How will the CCI's investigations into Amazon and Flipkart change e-commerce in India? | Asian Legal Business, accessed September 22, 2025, <https://www.legalbusinessonline.com/features/explainer-how-will-cci%28%99s-investigations-amazon-and-flipkart-change-e-commerce-india>.

experience considerable occupational health difficulties, including a high prevalence of musculoskeletal diseases and stress-related illnesses.²⁰

DISCUSSION

The obvious shortcomings of the ex-post competition law framework have resulted in an undeniable need for regulatory change. The discussion in India has centred on a trend toward proactive, ex-ante regulation, as expressed in the planned Digital Competition Bill (DCB) for 2024.

The core justification for an *ex-ante* model is the 'pacing problem'. The traditional enforcement process is inherently slow, a fundamental mismatch with the dynamics of digital markets, which can 'tip' in favour of a dominant player rapidly and irreversibly. Recognising this, the Committee on Digital Competition Law (CDCL) recommended the enactment of a new Digital Competition Act to selectively regulate large digital enterprises in a proactive manner.

The draft DCB aims to identify and regulate 'Systemically Significant Digital Enterprises' (SSDEs), the Indian equivalent of the EU's 'gatekeeper'.²¹ An enterprise can be designated as an SSDE based on quantitative financial and user thresholds, as well as qualitative criteria. Once designated, an SSDE would be subject to a list of *ex-ante* obligations, which are essentially prohibitions on specific types of conduct deemed harmful, such as self-preferencing, using non-public data of business users to compete against them, and tying and bundling services.

The DCB has ignited a fierce debate. Major technology companies and some industry associations argue that the bill is a premature "copy-paste" of the EU's Digital Markets Act (DMA) that may stifle innovation and increase costs for consumers. They are concerned that the rigid prohibitions, lacking an efficiency or business justification defence, will outlaw pro-competitive conduct.²² Conversely, many SME associations have voiced strong support, viewing the DCB as a necessary check on the overwhelming market power of large

²⁰Android Auto: the end of the essential facility doctrine as we know it - Wolters Kluwer, accessed September 22, 2025, <https://legalblogs.wolterskluwer.com/competition-blog/android-auto-the-end-of-the-essential-facility-doctrine-as-we-know-it/>.

²¹Legal Update | Overview of the Digital Competition Bill, accessed September 22, 2025, <https://www.veritaslegal.in/legal-update-overview-of-the-digital-competition-bill/>.

²²Digital Markets Act - Vajiram& Ravi, accessed September 22, 2025, <https://vajiramandravi.com/current-affairs/digital-markets-act/>.

platforms.²³ Some startups and consumer groups have expressed apprehension, worrying that the bill could disrupt ecosystems they rely on or negatively impact user experience by forcing the unbundling of integrated services. Legal and academic experts have expressed concerns regarding regulatory overlap with other laws, such as the Digital Personal Data Protection Act of 2023, and, more importantly, whether the CCI has the necessary technical knowledge and resources to efficiently execute such a complicated system.²⁴

India can draw crucial lessons from the European Union's Digital Markets Act, which serves as a real-world experiment in *ex-ante* regulation.²⁵ The DMA is built on a similar foundation, identifying 'gatekeepers' and imposing a list of 'dos and don'ts'. Initial enforcement has emphasised the critical relevance of institutional capacity; the EU's enforcement is led by a body with extensive prior technical knowledge in digital technology. This highlights the need for India to dramatically improve the CCI's technical skills.

A comparison of the frameworks reveals important differences and parallels. India's Competition Act, 2002, follows an *ex-post* approach, intervening after harm occurs and targeting enterprises with a 'Dominant Position'. In contrast, both the draft DCB and the EU's DMA employ an *ex-ante* approach with pre-determined rules to prevent harm, targeting designated 'SSDEs' or 'Gatekeepers'. The key prohibitions under the DCB and DMA are similar, focusing on practices like self-preferencing, anti-steering, and tying/bundling. A significant divergence is the absence of a legitimate business justification defence in the proposed Indian and EU *ex-ante* models, which are quasi *per se* in nature, unlike the existing Competition Act, where dominant firms can offer objective justifications for their conduct.²⁶ The fundamental purpose has also shifted from protecting competition for consumer welfare under the 2002 Act to ensuring fairness and contestability in digital marketplaces under the planned DCB and DMA.²⁷

²³The Dark Underbelly of India's Fast-expanding Gig Economy – The ..., accessed September 22, 2025, <https://thediplomat.com/2025/01/the-dark-underbelly-of-indias-fast-expanding-gig-economy/>.

²⁴Digital Competition Regulations Around the World, accessed September 22, 2025, <https://laweconcenter.org/spotlights/digital-competition-regulations-around-the-world/>.

²⁵An Alarm for India? Shaping India's AI, Data, and Anti-trust Future, accessed September 22, 2025, <https://www.irccy.in/post/an-alarm-for-india-sharing-india-s-ai-data-and-anti-trust-future>.

²⁶A Critical Evaluation of India's Proposed Digital Competition Act ..., accessed September 22, 2025, <https://ccijournal.in/index.php/ccijoclp/article/view/197>.

²⁷Joint Comment - India Digital Competition Bill - American Bar ..., accessed September 22, 2025, <https://www.americanbar.org/content/dam/aba/publications/antitrust/comments-reports-briefs/2024/joint-comments-india-bill-digital-competition.pdf>.

To negotiate this complicated terrain, the CCI needs to expand its institutional skills. The single most critical factor is the establishment of a specialised **Digital Markets and Data Unit** within the CCI, staffed with a multi-disciplinary team of lawyers, economists, data scientists, and engineers.²⁸ Enforcement innovations are also crucial. The new framework should empower the CCI to conduct proactive **algorithmic audits** to make the 'black box' more transparent. India's 'Lesser Penalty Regulations' could be adapted for algorithmic collusion by incentivising disclosure from data scientists who design the algorithms, coupled with robust whistleblower protections.²⁹ Furthermore, the CCI should invest in its own technological skills, using computer science analytical techniques such as frameworks based on the 'Byzantine Generals Problem' to discover sophisticated, cheat-tolerant algorithmic cartels.

CONCLUSION

The evidence and analysis presented in this paper lead to an unequivocal conclusion: the playing field of Indian e-commerce is demonstrably tilted. This tilt is not merely a consequence of aggressive business tactics but is deeply embedded in the structural logic of the platform economy. It is a product of the powerful network effects, the strategic leveraging of data as an insurmountable barrier to entry, and the deployment of opaque algorithms that can manipulate both market prices and consumer choices. The traditional *ex-post* framework of the Competition Act, 2002, designed for a different economic era, has proven to be a cumbersome and inadequate tool to level this arena in a timely and effective manner.

The proposed Digital Competition Bill represents a necessary and courageous step towards a new regulatory paradigm. Its embrace of *ex-ante* principles acknowledges the fundamental reality that in fast-tipping digital markets, prevention is more effective than cure. However, as the vigorous stakeholder debate has revealed, the bill in its current form is a blunt instrument that requires significant refinement. A delicate balance must be struck one that reins in the gatekeeping power of dominant platforms without stifling the innovation that is the lifeblood of the digital economy.

²⁸View of A Critical Evaluation of India's Proposed Digital Competition Act, accessed September 22, 2025, <https://ccijournal.in/index.php/ccijoclp/article/view/197/89>.

²⁹7 E-COMMERCE AND COMPETITION LAW: CHALLENGES AND THE WAY AHEAD- Siddharth Jain1 and Sameer Jain INTRODUCTION The Indian Industry, accessed September 22, 2025, <http://iclr.in/wp-content/uploads/2024/03/ICLR-Volume-3-article-2-pp-7-32.pdf>.

The path forward lies in a sophisticated, hybrid regulatory model. This involves enacting a refined version of the DCB that establishes clear, predictable rules for unambiguously anti-competitive conduct, while allowing for a more nuanced, effects-based analysis for practices with potential pro-competitive justifications. This legislative reform must be accompanied by a radical and urgent transformation of institutional capacity. The creation of a specialised, multi-disciplinary Digital Markets Unit within the CCI is not a luxury but a prerequisite for credible enforcement. This unit must be empowered with new tools including the authority to conduct algorithmic audits and the technical expertise to detect sophisticated digital cartels to match the capabilities of the entities it seeks to regulate.

Finally, this paper argues for a broader vision of competition policy. A fair digital market is not an end in itself, but a means to achieve larger socio-economic goals. The regulatory framework must look beyond narrow definitions of consumer welfare based on price and efficiency, and account for the profound impact of platform dominance on the viability of SMEs, the rights and well-being of workers, and the overall distribution of economic power. Forging a fair and contestable digital future for India requires not just a new law, but a new consensus: that the goal of competition policy is to ensure that the immense wealth and opportunity generated by the digital revolution are shared broadly, fostering an ecosystem that is not only innovative and efficient, but also inclusive and equitable.