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Charting The Digital Frontier: Decoding India's Path to Digital Competition Law

Dayitha. T.K.^a

^aSASTRA Deemed University, Thanjavur, India

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India is on the cusp of a transformative digital revolution, where the dominance of tech giants is reshaping economic paradigms. At the forefront of this evolution stands the imminent Digital Competition Act (DCA), currently undergoing final deliberations by the Ministry of Corporate Affairs. This paper delves into the nuances of the DCA, a legislative initiative aimed at curbing the unfettered expansion of Big Tech within India's dynamic digital markets. Against the backdrop of an increasingly digitalized economy, the shortcomings of the existing regulatory framework, notably the Competition Act of 2002, are starkly evident. The DCA seeks to bridge this regulatory gap by proposing proactive ex-ante regulations, drawing inspiration from the European Union's Digital Markets Act (DMA). Its primary objective is to identify and regulate 'Systemically Important Digital Intermediaries' (SIDIs), fostering a fair, transparent, and competitive digital ecosystem. A closer look at the issues identified by the Parliamentary Standing Committee on Finance highlights the gravity of the proposed regulatory overhaul. Concerns over monopolistic practices, data privacy, consumer protection, and the dominance of major tech players loom large. The recommendations of the Committee offer insight into addressing these challenges, proposing measures such as restructuring the Competition Commission of India (CCI) and imposing restrictions on in-house brand promotion by major tech companies. In this delicate balancing act, proponents of ex-ante regulations emphasize their necessity to prevent anti-competitive practices by major tech players. The potential enactment of the DCA holds the promise of establishing a regulatory framework that ensures SIDIs do not engage in practices detrimental to healthy competition, consumer choice, and innovation. This paper provides a concise preview of our comprehensive exploration of the DCA, analyzing its potential impact on India's digital landscape. By scrutinizing

global influences and navigating the intricate web of opposition and support, the paper unravels a pivotal chapter in India's digital age narrative, exploring the intersection of innovation, regulation, and competition.

Keywords: *digital competition act, tech giants regulation, ex-ante regulations, digital markets transformation.*

INTRODUCTION

Amid a profound and rapid digital transformation, India stands at a crucial crossroads where the dynamics of its digital markets are undergoing substantial changes. The increasing influence of powerful tech giants on the nation's economic landscape has sparked a nuanced dialogue about the urgent need for robust regulations to effectively govern their expanding impact. At the core of this ongoing discussion lies the imminent introduction of the Digital Competition Act (DCA). This legislative initiative holds the potential to redefine the regulatory framework overseeing India's dynamic digital ecosystem.

This multifaceted conversation revolves around the delicate interplay of innovation, the dynamics of competition, and the safeguarding of consumer well-being. The Ministry of Corporate Affairs has taken the lead, navigating the final stages of deliberation on the DCA. This legislative endeavor serves as a direct response to the transformative shifts ushered in by the digital age, aiming to bridge the existing regulatory gap that has granted major technology corporations, commonly known as Big Tech, a significant degree of autonomy within India's lively digital markets.¹

As the landscape evolves, the discourse highlights the intricate dance between fostering innovation, maintaining fair competition, and ensuring the protection of consumers in an increasingly digitized economy. The DCA emerges as a pivotal step in reshaping the regulatory landscape, seeking to strike a balance between fostering a thriving digital environment and addressing concerns related to the concentration of power and influence held by major tech

¹ Pariekh Pandey, 'Need for a Separate Digital Competition Law in India: Challenges to Existing Competition Enforcement' (TCCLR, 7 April 2023) <<https://www.tcclr.com/post/need-for-a-separate-digital-competition-law-in-india-challenges-to-existing-competition-enforcement>> accessed 22 February 2024

players. The ongoing deliberations within the Ministry of Corporate Affairs exemplify the nation's proactive stance in adapting its regulatory framework to the ever-evolving dynamics of the digital era.²

BACKDROP OF REGULATORY EVOLUTION

Amidst the changing regulatory landscape, India's current regulatory framework, outlined in the Competition Act of 2002³, has adeptly navigated traditional markets. However, the swift rise of the digital economy has exposed the limitations of this framework, prompting a necessary reassessment of regulatory mechanisms. What was once considered a supplementary component to traditional markets, the digital landscape has now assumed a central role in shaping economic narratives and influencing consumer behaviours.

As the Digital Competition Act (DCA) takes shape, it is essential to acknowledge the impact of global precedents, with particular emphasis on the European Union's Digital Markets Act (DMA)⁴. This international benchmark, strategically designed to curb the dominance of tech giants, casts a significant shadow over the formulation of India's digital regulatory framework. The fundamental question arises: to what extent will the DCA align with the DMA, and how will it be tailored to suit the distinctive socio-economic fabric of India?

The inherent challenge lies in striking a delicate balance – adapting global best practices to address India's unique needs. While drawing inspiration from the DMA is a sensible approach given its success in curbing anti-competitive practices, the DCA must be crafted with a keen understanding of India's economic nuances, market structures, and cultural intricacies.

The recalibration of regulatory mechanisms signifies a recognition that the digital economy requires bespoke regulations. The DCA is not merely an imitation but an opportunity to sculpt

² Mahiya Shah and Chaitley Sharma, 'A Revamped Regulatory Landscape for Digital Competition in India' (CBCL) <<https://cbcl.nliu.ac.in/competition-law/a-revamped-regulatory-landscape-for-digital-competition-in-india/>> accessed 22 February 2024

³ Competition Act 2002

⁴ Geeta Gouri and Swarnim Shrivastava, 'Indian Parliament Pushes for Ex Ante Rules on Digital Competition' (PYMNTS, 15 July 2023) <https://www.pymnts.com/cpi_posts/indian-parliament-pushes-for-ex-ante-rules-on-digital-competition/> accessed 22 February 2024

a regulatory framework that safeguards healthy competition, encourages innovation, and fosters a digital environment that resonates with India's diverse and dynamic socio-economic landscape. In navigating this intricate process, India seeks to learn from global experiences while crafting a regulatory paradigm uniquely suited to its own digital evolution.

FUNCTION OF INDIA'S COMPETITION COMMISSION IN OVERSEEING COMPETITION IN DIGITAL MARKETS

In an industry where digital marketplaces are constantly changing, the Competition Commission of India (CCI) is at the forefront of ensuring fair competition. Understanding the distinct characteristics of this industry, the CCI has acted proactively by creating a special Digital Markets Unit, among other initiatives. This unit is a testament to the CCI's dedication to looking into and dealing with anti-competitive behaviour that is common among well-known Indian tech companies. Moreover, with India contemplating the enactment of a Digital Competition Bill, efforts are underway to regulate specific practices like self-preferencing and data usage patterns that could potentially impede consumer choice and market fairness. In light of these developments, the CCI has been actively updating its regulatory framework to adapt to the shifting contours of digital markets.⁵

Under the astute leadership of Chairperson Ravneet Kaur, the CCI has proposed revisions to various aspects of its regulatory toolkit. This includes modifications to merger control processes, settlement agreement guidelines, and cartel leniency policies. Such revisions are crucial for empowering the CCI to effectively address the complex challenges emanating from emerging technologies such as digital platforms, big data analytics, and artificial intelligence. As emerging economies grapple with the task of curbing anticompetitive behavior in digital markets, India has emerged as a trailblazer in these deliberations. Through initiatives like the Committee on Digital Competition Law, the country is actively exploring policy options tailored to the unique

⁵ Vikram Sinha and Sharmadha Srinivasan, 'An Integrated Approach to Competition Regulation and Data Protection in India' (2021) 9 CSI Transactions on ICT 151-158 <<https://link.springer.com/article/10.1007/s40012-021-00334-7#:~:text=The%20Competition%20Act%2C%202002%2C%20provides,currently%20lacks%20a%20comprehensive%20regime.>> accessed 22 February 2024

characteristics of its digital marketplace. Additionally, the establishment of a specialized Digital Markets and Data Unit highlights the CCI's commitment to enhancing its expertise in regulating digital markets comprehensively.

Overall, the CCI's role in fostering fairness and promoting healthy competition within India's burgeoning digital economy cannot be overstated. By spearheading efforts to modernize existing legislation and implement innovative solutions, the CCI ensures that consumers reap the benefits of competitive pricing, heightened innovation, and superior product quality. This unwavering dedication to nurturing a robust digital ecosystem highlights the pivotal role played by the CCI in safeguarding the interests of Indian citizens while fostering economic growth and technological advancement.

The proposed Digital Competition Act (DCA) represents a significant step towards ensuring compliance with competition laws in digital markets. By imposing ex-ante obligations on Systemically Important Digital Intermediaries (SIDs), such as deterring practices like self-preferencing and deep discounting, the DCA aims to promote fair competition and safeguard consumer welfare. Entities failing to adhere to these obligations may face scrutiny of their mergers and acquisitions, along with regulation of their internal policies related to advertising, data, and search practices.⁶

In conclusion, the CCI's endeavors to modernize its regulatory framework reflect a proactive stance toward addressing the challenges posed by digital markets. Through initiatives like the DCA and the establishment of specialized units, the CCI is poised to ensure fair competition and consumer welfare in India's rapidly evolving digital economy, while imposing consequences on entities that flout competition laws within this domain.

⁶ Banikinkar Pattanayak, 'Competition Regulator Bolstering Tools to Plug Abuse in Digital Markets: Chairperson Ravneet Kaur' *The Economic Times* (12 October 2023) <<https://economictimes.indiatimes.com/news/economy/policy/competition-regulator-bolstering-tools-to-plug-abuse-in-digital-markets-chairperson-ravneet-kaur/articleshow/104364970.cms>> accessed 20 February 2024

KEY ELEMENTS OF THE DCA

While the detailed provisions of the act await finalization, it is expected that the DCA will draw inspiration from the European Union's Digital Markets Act (DMA). The existing Competition Act, 2002 in India primarily governs traditional markets, leaving the digital domain outside its regulatory purview. The DCA aims to rectify this by introducing an ex-ante regulatory regime for digital markets, ensuring fairness and transparency in the burgeoning digital ecosystem.

The Digital Competition Act (DCA) proposed in India encompasses several key elements targeted at regulating competition in digital markets effectively.

Identification of Systemically Important Digital Intermediaries (SIDs): SIDs are entities that play an inherent role in the digital ecosystem because of factors like their revenue, market capitalization, and the scale of their operations. Identifying SIDs is essential to target regulatory efforts toward entities that have a significant impact on competition within digital markets. By focusing on SIDs, the DCA aims to address concerns related to market dominance, unfair practices, and the potential for anti-competitive behaviour by key players in the digital space.

Ex-ante Obligations: The DCA proposes imposing ex-ante obligations on SIDs to proactively prevent anti-competitive practices before they occur. These obligations may include restrictions on self-preferencing (prioritizing their own products/services), deep discounting (offering products/services at significantly reduced prices), anti-steering (restricting users from accessing competitors' offerings), and exclusive tie-ups (limiting access to certain services). The DCA seeks to level the playing field for all parties involved in the digital market by instituting ex-ante requirements, which will promote competition, innovation, and consumer choice.

Merger Scrutiny: The DCA emphasizes closer scrutiny of mergers and acquisitions involving SIDs to prevent monopolistic consolidation that could stifle competition and harm consumer interests. Through enhanced merger scrutiny, the DCA seeks to ensure that mergers in the digital sector do not lead to the creation of dominant players that could abuse their market power.

Regulation of Internal Policies: The DCA includes provisions for regulating internal policies of SIDs related to advertising, data handling, and search practices. These regulations aim to promote transparency, accountability, and fair competition within digital platforms. By overseeing internal policies, the DCA intends to address concerns regarding data privacy, user rights, and the potential misuse of data by digital intermediaries.

Overall, the comprehensive framework of the DCA reflects India's commitment to fostering a competitive and innovative digital economy while safeguarding consumer interests and promoting a level playing field for all participants in the digital marketplace. The proposed elements of the DCA highlight a proactive approach toward addressing challenges specific to digital markets and ensuring a fair and dynamic ecosystem for businesses and consumers alike.⁷

INSIGHTS AND ADAPTATIONS FROM THE EU'S DIGITAL MARKETS ACT

The European Union's Digital Markets Act 2022⁸ (DMA) is a legislative framework that aims to regulate online platforms acting as gatekeepers in the digital economy to address unfair practices and promote competition. Enforced in 2022, the DMA focuses on preventing anticompetitive behaviors by large tech companies through ex-ante regulations and setting preemptive controls to ensure fair competition. The DMA is a result of years of debate and investigations by the European Commission, reflecting the EU's experience with digital markets.

Critically comparing the European Union's Digital Markets Act (DMA) and India's potential Digital Competition Act (DCA), it becomes apparent that while both aim to foster fairness and competition in digital markets, their approaches differ due to distinct market conditions and priorities. Both frameworks seek to address dominant positions and abusive behaviours of large digital platforms, prioritizing the promotion of innovation and consumer welfare. However, the DMA focuses on addressing issues arising from the dominance of large digital platforms, whereas the DCA may consider broader aspects of digital competition beyond gatekeeping

⁷ Shivani Bajaj, 'Explained: India's Upcoming Digital Competition Act and What Is the Debate around It All About' *CNBCTV18* (14 July 2023) <<https://www.cnbctv18.com/technology/explained--indias-upcoming-digital-competition-act-and-what-is-the-debate-around-it-all-about-17222501.htm>> accessed 23 February 2024

⁸ Digital Markets Act 2022

entities. Additionally, the DMA was developed through extensive experience with digital markets, whereas the DCA is designed specifically for India's unique challenges. The DMA introduces ex-ante regulations, whereas the DCA may focus on ex-post enforcement initially, given India's preference for a lighter-touch approach. Furthermore, while the DMA applies uniformly throughout the EU, the DCA may need to accommodate regional variations in India.

India should prioritize fostering innovation and entrepreneurship, especially among startups and small businesses, to drive economic growth. Striking a balance between regulation and innovation is crucial to prevent stifling entrepreneurial spirit while curbing anticompetitive practices. India needs to customize regulations to suit its unique market dynamics, considering factors like internet penetration levels, consumer behaviour, and the prevalence of local digital platforms. The DCA should align with existing and upcoming regulations in areas such as data privacy, telecommunications, and e-commerce to ensure coherence in the regulatory landscape.

India's diverse digital market structure necessitates a nuanced approach that accounts for regional variations and the dominance of local players alongside global tech giants. Implementing regulations that are proportionate to the market conditions in India is essential to avoid unintended consequences that could hinder growth and innovation. Addressing issues unique to India, such as data localization, data sharing, self-preferencing by platforms, and ensuring fair competition in emerging sectors like fintech and edtech, should be a priority for the DCA. Leveraging established bodies like the Competition Commission of India (CCI) for enforcement rather than creating new regulatory bodies can streamline implementation and enforcement processes. Regular monitoring of market developments and periodic reviews of the DCA are necessary to ensure its relevance and effectiveness in a rapidly evolving digital landscape.⁹

In conclusion, adapting the principles of the DMA for India's DCA requires a careful balance between fostering innovation, addressing specific market challenges, tailoring regulations to

⁹ Nisha Oberoi et al., 'India: Nurturing Competition in a Rapidly Evolving Digital Space' (*Global Competition Review*, 08 December 2023) <<https://globalcompetitionreview.com/guide/digital-markets-guide/third-edition/article/india-nurturing-competition-in-rapidly-evolving-digital-space>> accessed 22 February 2024

local dynamics, and ensuring effective enforcement through existing institutions. By incorporating these lessons learned and making necessary adaptations, India can create a regulatory framework that promotes competition, protects consumers, and fosters a vibrant digital economy tailored to its unique needs.

ISSUES IDENTIFIED BY THE PARLIAMENTARY STANDING COMMITTEE ON FINANCE

Several issues were identified by a report - "*Anti-Competitive Practices by Big Tech Companies*" of the Parliamentary Standing Committee On Finance¹⁰ that pose threats to fair competition and innovation, warranting close examination and appropriate regulatory responses.

Anti-steering¹¹ provisions refer to contractual or policy restrictions imposed by a platform on its business users, aimed at preventing them from directing consumers to alternative offers or services outside of the platform's own offerings. In **XYZ v Alphabet Inc and Others**¹², the Competition Commission of India (CCI) ruled against Google, highlighting concerns related to anti-steering provisions imposed by Google on app developers. These provisions, covered under sections 4(2)(a)¹³ and 4(2)(c)¹⁴ of the Competition Act, prevent business users of the Google Play Store platform from steering consumers to offers other than those provided by Google. The CCI found that Google's mandatory usage of its Billing System for paid apps and in-app purchases constituted an unfair condition imposed on developers, violating competition law. Google was ordered by the CCI to stop engaging in anti-competitive behavior, including anti-steering clauses that prevent app developers from interacting with customers or using outside billing and payment processing companies.

Self-preferencing¹⁵, sometimes referred to as 'platform neutrality', is the practice of a platform giving preference to its own subsidiaries or services, either directly or indirectly. This is

¹⁰ Ministry of Corporate Affairs, *Anti-Competitive Practices by Big Tech Companies* (Report No 53, 2022)

¹¹ *Ibid* 5

¹² *XYZ v Alphabet Inc. and Ors Case No 07/2020*

¹³ Competition Act 2002, s 4(2)(a)

¹⁴ Competition Act 2002, s 4(2)(c)

¹⁵ Ministry of Corporate Affairs (n 10) 5

particularly common when the platform serves as both a competitor and a platform provider. This included Section 4(2)(a), Section 4(2)(e)¹⁶, and Section 3(4)¹⁷. In the Competition Commission of India (CCI) case **Umar Javeed and Others v Google LLC**¹⁸ and Another, Google was found to have abused its dominant position. Google was accused of practices like pre-installing its applications on smart mobile devices and giving them premium placement, which restricted Original Equipment Manufacturers (OEMs) from freely choosing apps to pre-install and users from uninstalling pre-installed apps. The CCI directed Google to stop imposing these restrictions on OEMs and users, imposed a monetary penalty of INR 1337.6 crores, and rejected Google's appeals for an interim stay on the remedies imposed. In order to comply with the CCI's requirements, Google subsequently announced significant adjustments to its Android OS business model.

Bundling and tying practices¹⁹, which entail app store operators binding developers into accepting all services offered by the platform, are scrutinized under sections 4(2)(a), 4(2)(d)²⁰, and 3(4)(a)²¹ of the Competition Act. Section 4(2)(a) deals with the abuse of dominant position, while section 4(2)(d) addresses making contracts subject to supplementary obligations unrelated to the contract's subject. Section 3(4)(a) specifically pertains to tie-in arrangements, where the sale of one product is conditioned upon the purchase of another. In the case of **Sonam Sharma v Apple**²², The CCI differentiated between tying and bundling, highlighting that while tying involves forcing a second product upon consumers without fixed proportions, bundling refers to selling products in fixed proportions. The case emphasized antitrust concerns related to tie-in arrangements under Section 3(4)(a) of the Act.

Data usage²³ concerns encompass leading platforms exploiting their position by utilizing consumer preference data for their own benefit, collecting vast amounts of data for consumer

¹⁶ Competition Act 2002, s 4(2)(e)

¹⁷ Competition Act 2002, s 3(4)

¹⁸ *Mr. Umar Javeed and Ors v Google LLC and Anr* Case No 39/2018

¹⁹ Ministry of Corporate Affairs (n 10) 6

²⁰ Competition Act 2002, s 4(2)(d)

²¹ Competition Act 2002, s 3(4)(a)

²² *Shri Sonam Sharma v Apple Inc. USA & Ors* Case No 24/2011

²³ Ministry of Corporate Affairs (n 10) 7

profiling, and leveraging privileged data from one market to gain a competitive edge in another. These practices are examined under sections 4(2)(a), 4(2)(c), and 4(2)(e) of the Competition Act. Section 4(2)(a) talks about the abuse of the dominant position, while section 4(2)(c) addresses imposing unfair conditions or prices. Section 4(2)(e) relates to the usage of dominance in one market to enter or protect another market. These provisions collectively aim to address concerns regarding data usage by platforms, ensuring fair competition and protecting consumer interests. In light of WhatsApp's 2021 privacy policy update, the Competition Commission of India (CCI) opened an investigation into claims that it and Meta (previously Facebook) were abusing their dominant position regarding data practices. This investigation was launched under the case of **In Re: Updated Terms of Service and Privacy Policy for WhatsApp Users**²⁴.

Pricing or deep discounting practices²⁵, such as platforms offering deceptive sales and markdowns, can lead to service providers losing control over the final price of their services. These practices fall under Section 4(2)(a) of the Competition Act, which addresses the abuse of dominant position. This section aims to prevent anti-competitive behaviours that may harm fair competition and consumer interests. The case of **Delhi Vyapar Mahasangh v Flipkart Internet Private Limited and Another**,²⁶ centers on claims made against India's largest online retailers, Amazon and Flipkart, for engaging in anti-competitive behaviour. The charges include heavy pricing, exclusive partnerships, preferential listing, and the promotion of private labels – all of which are considered abuses of power and violations of vertical constraints. Delhi Vyapar Mahasangh filed a complaint, and the Competition Commission of India (CCI) approved a thorough investigation into the issue. The CCI initiated the investigation due to prima facie evidence of anti-competitive behaviour, specifically with respect to deep discounting and preferential listing. Despite arguments from Amazon and Flipkart, the Karnataka High Court lifted an interim stay against the CCI's inquiry, enabling it to continue.

²⁴ *Re: Updated Terms of Service and Privacy Policy for WhatsApp Users* Suo Moto Case No 01/2021

²⁵ Ministry of Corporate Affairs (n 10) 8

²⁶ *Delhi Vyapar Mahasangh v Flipkart Internet Private Limited and Anr* Case No 40/2019

Exclusive tie-ups²⁷ refer to agreements between a platform and a brand that permit the sale of the brand's products exclusively on the platform, thereby restricting competition. Such practices fall under Section 4(2)(a) and Section 4(2)(c) of the Competition Act, which address abuse of dominant position and imposing unfair conditions or prices, respectively. Additionally, these agreements may also be scrutinized under Section 3(4), which talks about vertical anti-competitive agreements. These provisions aim to prevent anti-competitive behaviours that stifle market competition and harm consumer interests. The case of **NRAI v Zomato Limited and Another**²⁸ involves allegations of anti-competitive behaviour by food delivery giants Swiggy and Zomato, as accused by the National Restaurant Association of India (NRAI). The allegations include monopolistic practices such as preferential agreements, minimum business guarantee contracts, and withholding consumer data from restaurant partners. The Competition Commission of India (CCI) commenced an inquiry into these allegations under Section 3(4) and Section 4(2)(a) of the Competition Act, 2002. NRAI's concerns centre on exclusivity contracts, commission structures, and platform neutrality issues, potentially impacting competition in the food delivery market.

Restricting third-party applications²⁹ violates key provisions of the Competition Act. Under Section 4(2)(a), it may constitute abuse of dominant position. Limiting third-party apps could hinder technical development (Section 4(2)(b)), create unfair conditions (Section 4(2)(c)), or exploit dominance in one market to enter another (Section 4(2)(e)). Refusal to deal with certain apps could breach Section 3(4)(d)³⁰ by harming competition. These provisions aim to uphold innovation, consumer choice, and fair competition. In **Matrimony.com Limited v Google and Others**³¹, the Competition Commission of India (CCI) found Google to have engaged in search bias, contravening the Competition Act. The CCI determined that Google's practice of assigning predetermined fixed positions to universal search results until 2010 was not reflective of the most relevant results for users' queries. As a result, the CCI prohibited Google from resorting to

²⁷ Ministry of Corporate Affairs (n 10) 8

²⁸ *NRAI v Zomato Limited and Anr* Case No 16/2021

²⁹ Ministry of Corporate Affairs (n 10) 10

³⁰ Competition Act 2002, s 3(4)(d)

³¹ *Matrimony.com Limited v Google LLC and Ors* Case No 07 and 30/2012

such fixing of positions in the future. This ruling holds precedence and sets a standard for addressing similar issues of search bias and unfair positioning of search results in the future.

Advertising policies³², which violate intricate provisions of the Competition Act by using consumer data to target advertising through artificial intelligence and machine learning. These include Section 4(2)(a) on abuse of dominant position, Section 4(2)(c) on imposing unfair conditions, and Section 4(2)(e) on using dominance to gain an advantage in related markets. These provisions aim to prevent anti-competitive behaviors, ensuring fair competition and protecting consumer interests. the Competition Commission of India (CCI) has launched an investigation into WhatsApp and Meta's data practices, specifically examining whether the data-sharing provision could lead to exclusionary effects in the display advertising market. This investigation was initiated under the case of **In Re: Updated Terms of Service and Privacy Policy for WhatsApp Users**.

THE RECOMMENDATIONS OF THE PARLIAMENTARY STANDING COMMITTEE ON FINANCE

The Parliamentary Standing Committee on Finance is a key legislative body in India responsible for examining and scrutinizing matters related to finance, economic affairs, and various aspects of government policies and programs. Comprising Members of Parliament from both the Lok Sabha (House of the People) and the Rajya Sabha (Council of States), this committee plays a pivotal role in providing oversight and making recommendations on financial and economic matters to the government.

In the context of the Digital Competition Act (DCA) in India, the Parliamentary Standing Committee on Finance has taken a proactive approach in addressing concerns surrounding the digital economy. The committee's recommendations are aimed at establishing a regulatory framework that promotes fair competition, safeguards consumer interests, and fosters innovation within the digital sector.

³² Ministry of Corporate Affairs (n 10) 11

The creation of a specific piece of law, the Digital Competition Act (DCA), which would act as the cornerstone of regulatory initiatives in the digital sphere, is one of the committee's main proposals. The purpose of this proposed law is to establish precise rules and procedures for controlling the operations of significant digital intermediaries and tech corporations in India. In addition, the committee supports the reorganization of the Competition Commission of India (CCI) in order to more effectively tackle the distinct obstacles presented by digital marketplaces. In order to effectively enforce competition rules, this includes the establishment of a dedicated digital markets unit inside the CCI, whose job it is to monitor and regulate activity unique to the digital sector.

Additionally, the committee recommends the Identification of Systemically Important Digital Intermediaries (SIDIs) based on predetermined criteria such as revenue, market capitalization, and user base. The concept of Systemically Important Digital Intermediaries (SIDIs) plays a crucial role in the impending Digital Competition Act (DCA) in India. SIDIs are entities within the digital ecosystem that hold significant market power and influence, warranting special regulatory attention to ensure fair competition, transparency, and consumer protection. By using particular criteria including revenue, market capitalization, and user base, the DCA hopes to identify and regulate these SIDIs. In India's dynamic digital markets, the DCA aims to prevent anti-competitive acts and create fair playing fields by designating some digital intermediaries as SIDIs.³³

The Parliamentary Standing Committee on Finance has recommended the enactment of the DCA to address concerns related to major tech companies' dominance and their potential to engage in harmful practices. The proposed measures include restructuring the Competition Commission of India (CCI) with a dedicated digital markets unit, imposing reporting obligations on SIDIs, and prohibiting in-house brand promotions by large tech firms. Non-compliance with these regulations could result in penalties amounting to 10% of the global turnover of the offending companies. However, the introduction of ex-ante regulations, as

³³ KR Srivats, 'House Panel Recommends Enacting Digital Competition Act' *Business Line* (26 December 2022) <<https://www.thehindubusinessline.com/economy/policy/house-panel-recommends-enacting-digital-competition-act/article66292023.ece>> accessed 22 February 2024

proposed by the DCA, has sparked debates and opposition. Critics argue that such regulations may hinder innovation and deter foreign investments in India's digital sector. The effectiveness of enforcing ex-ante regulations, along with concerns about administrative challenges and the existing capacity of regulatory bodies like the CCI, remains a point of contention among stakeholders. In essence, the identification and regulation of SIDIs under the DCA represent a pivotal step towards creating a fair, transparent, and competitive digital ecosystem in India. By targeting entities with significant market power, the DCA aims to foster healthy competition, protect consumer interests, and promote innovation within the rapidly evolving digital landscape of the country.³⁴

The committee also highlights the importance of prohibiting in-house brand promotion by major tech companies, aiming to mitigate conflicts of interest and ensure a level playing field for all market participants. This measure highlights the committee's commitment to fostering fair competition within the digital ecosystem. Finally, the committee emphasizes the need for robust enforcement mechanisms, including penalties for non-compliance with the provisions of the DCA. By imposing significant penalties amounting to a percentage of global turnover, the committee aims to deter violations and uphold the integrity of the regulatory framework.

THE EFFECTS OF EX-ANTE REGULATION IN INDIA

Ex-ante regulations aim to avoid anti-competitive activity by proactively identifying and addressing issues ahead of time and changing stakeholder behaviour through regulatory involvement. While aiming to ensure fairness, contestability, and innovation in digital markets, there are practical considerations and potential implications to be mindful of. Ex-ante regulations aim to promote openness, encourage disruptive innovation, and ensure fair competition by addressing issues with market power, exploitative tactics, and inequalities of bargaining power. However, implementing such regulations may impact innovation efforts

³⁴ Naval Satarawala Chopra and Yaman Verma, 'Does India Require Ex-Ante Competition Regulation in Digital Markets?' (*Shardul Amarchand Mangaldas & Co*, 03 April 2023) <<https://www.amsshardul.com/insight/does-india-require-ex-ante-competition-regulation-in-digital-markets/>> accessed 22 February 2024

within the economy as markets become bound by predetermined operating procedures and standards.³⁵

The implications of competition issues in digital markets, as identified by the Parliamentary Standing Committee on Finance, are significant. The Committee recommends ex-ante measures to regulate competition in digital markets to prevent potential monopolization. However, implementing ex-ante regulation in the digital sector may lead to 'false positives' where non-anti-competitive conduct is mistakenly labeled as anti-competitive. This misclassification could result in increased regulatory costs, barriers to entry, and diminished incentives for innovation among local online businesses and start-ups, contradicting the objectives of the 'Digital India' Mission.³⁶

The recommendations for a new Digital Competition Act and ex-ante regulation coincide with the revised Digital Personal Data Protection Act³⁷ and the new Competition (Amendment) Bill³⁸ by Parliament. It is crucial to carefully consider these implications before enacting any legislation to ensure well-informed decision-making in this regard, stronger competition advocacy campaigns, expert witness consultations with data scientists and algorithm experts, and the creation of a digital markets and data monitoring unit within the Competition Commission of India (CCI) could all be more productive means of controlling competition in digital markets. Moreover, the CCI could continue promoting self-regulation measures for digital players across various markets and take regulatory action when necessary.³⁹

Overall, addressing the competition issues in digital markets highlights the necessity for thoughtful deliberation and informed decision-making to ensure that any regulatory measures

³⁵ Gaurav Somenath Ghosh and Subhashish Gupta, 'Ex-Ante Regulation in Digital Markets in India: Some Practical Considerations' (2023) IIM Bangalore Research Paper No 683/2023 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4492393#> accessed 22 February 2024

³⁶ Harshita Sharma and Arjun Kapur, 'The Devil In Disguise: Examining The Feasibility Of Ex-Ante Regulations In The Indian Digital Market' (CBFL, 19 July 2023) <<https://www.cbflnldelhi.in/post/the-devil-in-disguise-examining-the-feasibility-of-ex-ante-regulations-in-the-indian-digital-market>> accessed 22 February 2024

³⁷ Digital Personal Data Protection Act 2023

³⁸ Competition (Amendment) Bill 2023

³⁹ Madhumitha Sridharan, 'Regulating the Digital Sphere: India's Approach to Ex Ante Measures and Competition Law' (Surana & Surana, 20 October 2023) <<https://suranaandsurana.com/2023/10/20/regulating-the-digital-sphere-indias-approach-to-ex-ante-measures-and-competition-law/>> accessed 22 February 2024

promote healthy competition, and innovation, and align with the overarching goals of the Digital India initiative.

WAY FORWARD

Navigating the Digital Competition Act (DCA) in India requires several essential factors. First off, the DCA needs to be customized to fit India's own socioeconomic environment, even if it takes inspiration from the Digital Markets Act (DMA) of the European Union. This adaptation entails evaluating the applicability of global models and modifying them to meet the unique requirements of India. Furthermore, putting the Parliamentary Standing Committee on Finance's recommendations into practice – like creating a unit within the Competition Commission of India (CCI) devoted to digital markets, identifying Systemically Important Digital Intermediaries (SIDIs) – needs careful consideration of their viability, and workable implementation plans.

Striking a balance between nurturing innovation and curbing anti-competitive behaviours is crucial. The path forward entails devising strategies to foster innovation while upholding fair competition standards within the digital ecosystem. Despite presenting opportunities for developing a robust regulatory framework, the DCA also poses challenges, including administrative complexities and potential negative impacts on innovation and foreign investment. Moving forward involves addressing these obstacles and capitalizing on the opportunities presented by the DCA.⁴⁰

Effective engagement with diverse stakeholders, including industry leaders, policymakers, academics, and civil society organizations, is essential for developing and implementing the DCA. This entails fostering meaningful collaboration throughout the legislative process. Furthermore, ensuring compliance with the DCA requires the establishment of effective enforcement mechanisms, including determining necessary resources, personnel training, and appropriate sanctioning procedures.

⁴⁰ Chauhan S and Bhardwaj T, 'Competition Concerns in Digital Advertisement Markets: Consolidating the Regulatory Approach for India' (2023) 24 Competition and Regulation in Network Industries 139

Regular monitoring and evaluation of the DCA's impact are imperative for refining the regulatory framework and addressing emerging challenges. This involves devising strategies for tracking the effects of the DCA and making necessary adjustments based on evaluation outcomes. Navigating the path forward with the Digital Competition Act (DCA) in India requires careful consideration of various factors, including customization to local contexts, balancing innovation with competition, effective stakeholder engagement, robust enforcement mechanisms, and ongoing monitoring and evaluation. By adopting a holistic approach that addresses these considerations, policymakers can develop and implement a regulatory framework that promotes fair competition, fosters innovation, and protects consumer welfare in India's digital markets.

CONCLUSION

In conclusion, the Digital Competition Act (DCA) represents a significant step forward in regulating India's digital markets proactively. By addressing concerns surrounding market dominance, anti-competitive behaviour, and consumer welfare before they become entrenched, the DCA aims to foster competition, innovation, and consumer choice in the digital economy. Through a careful examination of global precedents, implementation of recommendations, and effective stakeholder engagement, policymakers can navigate the complexities of the DCA and ensure its successful implementation. Moreover, the DCA has the ability to create a strong regulatory environment that supports fair competition and improves consumer welfare by finding a balance between regulation and innovation, resolving issues, and grasping possibilities. Regular monitoring and evaluation will be crucial for refining the DCA and adapting it to the evolving digital landscape. Ultimately, the successful implementation of the DCA will contribute to creating a level playing field in India's digital markets, fostering innovation, competition, and growth in the digital economy.