

Abuse of Dominant Position by Big Tech Companies in the Digital Era

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Abstract: India's rapid digitalization in recent years has led to the rise of large digital enterprises, with tech giants like Google, Amazon, and Facebook becoming dominant players in the digital economy. While these companies have driven significant innovation, their unique business models have also raised growing concerns regarding anti-competitive practices. The Parliamentary Standing Committee on Finance, in its report on 'Anti-Competitive Practices by Big Tech Companies' highlighted the inadequacies of the ex-post regulatory approach and recommend the introduction of a 'Digital Competition Act' to ensure fair competition in the digital ecosystem.

Keywords: rapid digitalization

I. INTRODUCTION

India's rapid digitalization in recent years has led to the rise of large digital enterprises, with tech giants like Google, Amazon, and Facebook becoming dominant players in the digital economy. While these companies have driven significant innovation, their unique business models have also raised growing concerns regarding anti-competitive practices. The Parliamentary Standing Committee on Finance, in its report on 'Anti-Competitive Practices by Big Tech Companies' highlighted the inadequacies of the ex-post regulatory approach and recommend the introduction of a 'Digital Competition Act' to ensure fair competition in the digital ecosystem.

In line with this recommendation, a Committee on Digital competition law was established to explore the need for an ex-ante regulatory framework, given that the current Competition Act of 2002- based on an ex-post framework- may not be well-suited to address the challenges posed by the fast-evolving digital markets. One of the key recommendations of this Committee was the proactive introduction of a Digital Competition Act, incorporating ex-ante measures that would allow the Competition Commission of India (CCI) to monitor the conduct of large digital enterprises and intervene before anti-competitive practices occur.

This paper examines the challenges posed by the dominance of big tech companies in India's digital market, focusing on the implications of their market power and the need for a specialized regulatory approach. By analyzing the recommendations of the Parliamentary Standing Committee and the Committee on Digital Competition Law, the paper explores the potential benefits and challenges of introducing a Digital Competition Act to ensure fair competition and prevent the abuse of dominant position in the digital age.

Constitutional Provisions:

Article 19(1)(g)¹ : Grants every citizen the fundamental right to engage in any occupation, trade, or business, promoting a competitive and entrepreneurial economy.

Article 19(2)(ii) : Allows the State to regulate monopolies, balancing individual freedom with the need for public welfare and ensuring that business activities do not harm societal interest.

Article 38 : The State must promote the welfare of its people, ensuring social, economic, and political justice to safeguard national order and fairness.

Article 39(c) : Prevents the unjust concentration of wealth and monopolies over the means of production, ensuring economic fairness and reducing disparities in society.

¹ The Constitution of India

These constitutional provisions justify regulating the “Abuse of Dominant Position,” as concentrated market power can harm competition, pluralism, and fairness in the economy.

By following these constitutional principles, regulatory bodies can reduce monopolistic risks and create a fair, competitive, and healthy economic environment.

Salient Aspects Of The Competition Act, 2002²

"The Competition Act of 2002 encapsulates a broad range of objectives intended to foster fair and healthy competition within the Indian market landscape³. These objectives, which are listed below, demonstrate the intricate approach to competition regulation:

The Act's primary goal is to prevent activities that significantly harm competition in order to preserve market dynamics and provide equity for all stakeholders.

Second, it seeks to promote and preserve competition in a variety of trade and industry sectors because it acknowledges the vital role that competition plays in promoting innovation, efficiency, and consumer welfare.

Additionally, the Act is founded on the idea of safeguarding the interests of consumers and acknowledges them as significant participants in the market environment.

Besides, it is possible to promote the access of industry participants in India to have an unfettered right of dealing without restrictions and create optimal conditions for prosperity and economy growth.

The final factor of the Act is an element that will provide the Act with its necessary implementation – this is known as the Competition Commission of India.

In order to achieve these objectives, the Act primarily targets two forms of anti-competitive behavior: restraint of trade and the abuse by one firm or several firms of a dominant position in a given market. It also controls mergers and acquisitions as well as other combinations. Nine chapters of the Act, provide many-sided descriptions of various aspects of competition regulation⁴.

Section 4: Abuse of Dominance under the Competition Act:

Perhaps the fairly gross point I should like to make is that anyone who seeks to exploit their controlling position will suffer the consequences. This is a state where the abilities and conditions for operation of one party are enhanced to allow it to exert operations that stall market influence from competitors.

The phrase "dominant position"⁵ refers to a strong position that an organization holds in the relevant Indian market, allowing it to:

- operate independently of competitive forces prevailing in the relevant market
- affects its competitors or consumers or the relevant market in its favour.

Also, they affect their rivals in a favorable way, their customers or the state of market. The freedom one company has over ascertaining Indians market, independency of other commercial forces is known as dominating position. This means that, before a firm can be accused of abusing its position of dominance, it has to be dominant in the relation to a specific product as well as the geographical market of that specific product. Prohibited usage of such strategies is indicated in Section 4 of the Competition Act of 2002. Thus, it implies that no company or organization should engage in the exploitation of its costumers or those in the market.

Section 19(4): Determination of Dominant Position

The Commission shall consider all or any of the following factors in determining if a business is in a dominant position as per section 4: market share of the business; size and resources of the business; size and significance of its competitors; economic power, including any commercial advantages that may be possessed over competitors; vertical

² The Competition Act, 2002

³ SarthakDube, “Abuse of Dominance under the Competition Act” 5 Iss 2 *Burnished Law Journal* 2582-5534 (2024)

⁴ *Supra*

⁵ The Competition Act 2002, (Act 12 of 2003), s. 4.

integration of businesses or the sale or service network of such businesses; reliance of customers on the business; monopoly or dominant position, howsoever acquired-whether through the operation of a law, government company, public sector undertaking, or other means. The Commission may consider any of the following factors relevant to the investigation: market structure and size; social obligations and social costs; regulatory barriers, financial risk, capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost for consumers in substitutable goods or services; relative advantage associated with economic development contributions by a firm in a dominant position that has or is likely to have an appreciable adverse effect on competition; and all other factors.

Section 3: Anti-competitive agreements

Such an agreement has been prohibited by the competition law in India with the purpose to maintain healthy market competition and behavior to serve the public interest. Anti-competitive agreements are such types of agreements which establish companies during business transactions that can weaken competition in a particular market or satisfy one specific group to the detriment of others. The Competition Act, 2002 has prohibited such anti-competitive contracts. "Anti-Competitive Agreements" would mean any type of agreement between two or more companies operating within a marketplace that collectively attempts to lower or regulate the prices of products or securities. The companies involved would intend to exploit consumers and capture larger market shares. It will be due not so much to their efforts but rather because of reduced competition among firms; it will impede consumer interests. In case either goods or service provided is affected adversely, it is prohibited.

Digital Era:

Smartphone use, widespread internet penetration, and quick technical advancements have all played a part in India's incredible transformation in the digital era. Over the past ten years, India has emerged as one of the largest and fastest-growing digital markets globally. Government initiatives like Digital India and Startup India, which encouraged the expansion of digital infrastructure and foster an innovative atmosphere have sped up this shift. The proliferation of digital platforms in sectors including fintech, e-commerce, healthcare, and education has fundamentally altered how businesses operate and how consumers utilize services.

With over 750 million internet users, India has become a major hub for both local digital entrepreneurs and global tech companies. But rapid digitization has also brought up significant difficulties, such as concerns about data privacy, the monopolization of online marketplaces, and the potential exclusion of socially marginalised populations. As digital platforms takeover many aspects of India Society, there is an increasing need for effective regulation that can combine innovation with consumer protection, fairness, and competition in the digital economy.

Abuse of Dominant Position by 'Big Tech' Companies :

Discussions about big tech often get bogged down in acronyms like GAFA (Google, Apple, Facebook, and Amazon), FAANG (Facebook, Amazon, Apple, Netflix, and Google), and for Chinese firms, BATX (Baidu, Alibaba, Tencent, and Xiaomi). However, these terms simply label the players in the big tech arena. In a 2017 article for Slate, Will Oremus pointed out that the prefix 'Big' attached to any industry, such as Big Pharma or Big Tobacco, conveys not only the scale of these companies but also a prevailing sense of fear and skepticism. Thus, the term is used to characterize "dominant industries whose influence cannot be controlled by politicians or market competition." Some key characteristics of big tech include substantial financial resources and market power, advanced data intelligence, robust infrastructural capabilities, and significant societal impact⁶.

1. Predatory Pricing: Pricing a product below the production cost or below the prevailing market price with the aim of "becoming" the market leader and once competitors have been wiped out in the process, the price can be gradually raised.

⁶SmritiParsheera, , "India's Policy Responses to Big tech: and an eye on the Rise of 'alt Big tech'" 18 *Indian Journal of Law and Technology*(2022)

2. Discriminatory Pricing: To give different price offers to assorted consumers for identical products/services since this could be prejudicial to competition.

3. Curtailment or Prohibition of manufacturing, Marketing or Technological Expansion: Controlling or limiting the quantity of goods or services produced through out the market thereby creating shortage or scarcity in the market, usually for the purpose of increasing the price. Any action that would lock out technology growth or limit consumers' gains from the improved technology, or constrain competition.

4. Tying and bundling : Situation where one large company requires the customers to purchase one good (the tying product) in order to acquire another good (the tied product). This can limit consumer options and limit the arrival of new competitors in the market of the so-called 'tied' product.

5. Refusal to Deal: The dominant enterprise also give no reason for not transacting business with certain customers or suppliers. Such may entail denying credit to clients, or refusing to deal with competitors or suppliers in a manner that injures competition.

6. Exclusive Dealing: Where the dominant business partner forces a supplier or a buyer to deal with only that outlet that exerts superior market and competitive control by barring competitors access to the same market or resources.

7. Resale Price Maintenance: Placing limitations as to the extent of which resellers can offer their products or services for sale or at what prices—practices that artificially skew the competing market.

8. Excessive Pricing: Charging prices that are excessively high for goods or services without any valid justification. This can happen when a company is in a dominant position and uses its power to extract higher prices than what is fair or reasonable.

9. Imposing Unfair or Unreasonable Conditions: Imposing unfair or unreasonable conditions in contracts or agreements with customers or suppliers. This could include forcing customers into unfavorable terms or taking advantage of the market power to impose strict conditions.

On the 22nd of June, 2021⁷, an investigation was launched based on information filed by *Kshitiz Arya and Purushottam Anand against Google LLC, Google India, Xiaomi, and TCL India Holdings*. They alleged that Google abused its dominant position in the smart TV market by entering into anti-competitive agreements with Xiaomi and TCL to sell TVs with proprietary Google apps, and based on the informants' evidence submissions, it was concluded that Google had abused its dominant position

The Competition Commission of India opened an investigation into *WhatsApp* on March 24, 2021⁸, regarding its updated terms of service and privacy policy, in *Suo Moto Case No.1 of 2021*, against WhatsApp and Facebook (now known as Meta), that users were required to accept their new privacy policy, which shared data with Facebook, which formed a prima facie case due to the "take it or leave it" nature of the new policy, and an investigation was ordered.

On November 9th, 2020, *XYZ v. Alphabet Inc, Google LLC, and its Ireland and Indian Subsidiaries*⁹ were announced. Google was accused of abusing its dominant position in the market by unfavorably recommending its apps to consumers and unfair monopoly in the manner governing payments and in-app purchases through its store, similar to the prior case. It was determined that there was a prima facie case of misuse of its dominating position, and the DG was ordered to investigate the malpractices committed.

On January 13, 2020, the *Delhi Vyapar Mahasangh* resolved to sue Flipkart and Amazon¹⁰. According to the informants, Flipkart and Amazon have vertical deals with their preferred suppliers, who were controlled indirectly by the firms themselves. Furthermore, these corporations allegedly offered steep discounts on products sold by vendors who were affiliated with them in some way, as well as preferred listing for these merchants, who would have exclusive tie-ups and private labels, thus limiting competition. In these cases, a prima facie violation was found, and an investigation was launched.

⁷*Kshitiz Arya v. Google LLC, 2021 SCC OnLine CCI 33*

⁸*WhatsApp LLC, In re, 2021 SCC OnLine CCI 19*

⁹*XYZ v. Alphabet Inc., 2020 SCC OnLine CCI 41*

¹⁰*Delhi VyaparMahasangh v. Flipkart Internet Private Limited, 2020 SCC OnLine CCI 3*

Umar Javeed, SukarnaThapar, and AaquibJaveed against Google LLC and Google India's case were decided on 16th April, 2019¹¹. The informants alleged that Android was a free open-source software, but for utilising apps and framework by Google, manufacturers had to enter into multiple agreements with Google, many of which were allegedly anti-competitive, and that they allegedly bundled and made the installation of its applications and GMS suite mandatory, which amounted to an unfair condition on manufacturers while also leveraging Google's dominant position, which required an investigation by the DG.

The case of *Baglekar Akash Kumar v. Google LLC & Google India* was decided on January 29th, 2021¹². Because of the dominance of its programmes, it was said that Google was a dominant player in practically every aspect of technology, including phones, laptops, PCs, and other gear. However, no anti-competitive behaviour was discovered due to the informant's failure to provide sufficient evidence of Gmail's and Google's superior market positions.

*Vinod Kumar Gupta against WhatsApp Inc*¹³ case was decided on 1st June, 2017. The informant alleged that since WhatsApp was acquired by Facebook, its users were forced to share their details to continue using it, since it had a dominant share in the world market, alleging that users' data could be sold. It was decided that no case existed against the OP, since many other free or low-cost alternatives were available and thus, the market barrier allegations did not hold any substance.

Role of CCI in Prohibiting Anti-Competitive Agreements:

- The CCI has the authority to conduct inquiries into agreements made by enterprises, as granted under section 19 of the competition law.
- According to this provision, if any agreements are found to contravene section 3(1) of the competition law, the CCI can initiate an inquiry on its own, based on complaints from individuals, consumers, corporations, or referrals from the government or other authorities.
- During the inquiry, the commission must determine whether the agreement negatively impacts competition by considering various factors, such as creating barriers for new market entrants, driving existing enterprises out of the market, affecting customer advantages, and influencing the development of manufacturing or service provision methods.
- If the commission finds a violation of the provisions after the inquiry, it can direct the director general to conduct a more detailed investigation. If no issues are identified during the inquiry, the CCI can close the matter.
- The director general is required to submit a report on the findings after the investigation, which the CCI then shares with the involved parties.
- If the director general's report indicates no violation, the CCI will seek suggestions or objections from the parties.
- After hearing from the complainant or considering the director general's recommendations, if the CCI concludes that there is no violation, it will dismiss the complaint.
- If a violation of the law is found, the CCI will direct further inquiries to be conducted as per the conditions outlined in the act.
- Following the inquiry, the CCI has the authority to issue orders, which may include directives to enter into new agreements.
 - a. Terminate the agreement
 - b. Terminate the agreement
 - c. Impose penalty not exceeds 10% of turnover of last three financial years
 - d. Modified the order to extent violating the provision.

¹¹Umar Javeed v. Google LLC, 2019 SCC OnLine CCI 42

¹²BaglekarAkash Kumar v. Google LLC, 2021 SCC OnLine CCI 2

¹³Vinod Kumar Gupta v. WhatsApp Inc., 2017 SCC OnLine CCI 32

Global Development on Competition Law :

The EU was among the first regions to update its approach to anti-competitive practices, notably through the 2019 platform (P2BR) and the 2022 Digital Markets Act (DMA)¹⁴. The DMA targets dominant digital players, referred to as "gatekeepers," and addresses unreasonable trading practices, allowing for prompt and effective market interventions. While some critics argue that the DMA may stifle innovation and lead to increased costs, its success largely hinges on how well it is implemented.

The United Kingdom reflects the EU's regulatory framework but with some adjustments. The proposed British Digital Markets, Competition, and Consumer Bill aims to establish a Digital Markets Unit (DMU) that would create a code of conduct for designated companies.

In the United States, the Federal Trade Commission is investigating anti-competitive behaviors on a case-by-case basis and has the authority to initiate market actions. However, proposals like the US Online Innovation and Choice Act, which sought to introduce ex ante regulations, failed to gain broad support. Critics argued that the intent was less about consumer protection and more about penalizing specific US tech companies for anti-competitive practices that may not necessarily harm the market or consumers.

Similarly, Brazil introduced a bill in October 2022 aimed at regulating digital markets, which closely resembles the EU's DMA.

Australia has implemented a hybrid regulatory framework. The Competition and Consumer Act includes ex post competition controls, while a 2021 amendment introduced ex ante regulation for certain services on digital platforms. This aims to address the power imbalance between Australian news companies and major digital platform corporations that enjoy significant advantages in bargaining power.

In Canada, a public consultation was launched in 2019 to evaluate whether its domestic competition law is suitable for regulating digital markets. The Canadian Competition Bureau has opposed ex ante regulation, arguing that market size is not a determining factor under current law unless it can be demonstrated that a dominant company has leveraged its position to suppress competition. In the Asia-Pacific region, South Korea was among the first to tackle monopolies in the app sector. The 2021 amendment to the Act on Telecommunications Activities prohibited certain payment systems from being used to attract applications for mobile app development. Ongoing discussions are also taking place regarding the introduction of legislation similar to the Digital Markets Act (DMA). In Japan, the Act on Improving Transparency and Fairness of Digital Platforms (TFDPA), enacted in 2021, employs a "co-regulatory approach." This allows the government to establish a general framework for enhancing transparency among digital platforms while leaving the implementation to individual operators, with provisions for government oversight. Currently, the Act applies only to online mall and app store operators. The Japanese government is also exploring legislation aimed at fostering competition in four digital sectors: app stores and payments, search engines, browsers, and operating systems. These developments reflect a broader global trend of reassessing regulatory frameworks in the digital landscape.

Development of Competition Law in India :Is the Competition Act, of 2002 capable enough to eliminate the abuse of dominance by Tech Titans

With the rise of internet giants reshaping the economic landscape, India is on the brink of a significant digital transformation. The rapid growth of digital companies and widespread technology adoption have profoundly influenced both the economy and society in India. Digitalization has transformed the delivery of goods and services, changing the way consumers interact with service providers and each other.

While digitalization brings numerous pro-competitive advantages, such as encouraging innovation and the creation of new products and services, it also presents challenges. Although India's digital economy has seen swift growth in recent years, this expansion has not been without its issues. Concerns have been raised by individuals and businesses to the Competition Commission of India regarding the practices of large digital firms.

¹⁴Nikita Jain, Shiva Kanwar, Saloni Dhadwal, "Regulating Competition In Digital Markets" *ICRIER PROSUS Centre For Internet And Digital Economy*

The Parliamentary Standing Committee on Finance released its 53rd Report on "Anti-Competitive Practices by Big Tech Companies" on December 22, 2022, addressing these issues. The report highlights that the COVID-19 pandemic had a profound impact on India's digital economy, accelerating the shift to digital platforms in areas such as contactless payments, e-commerce, digital health, and online education. As a result of the pandemic, many businesses transitioned to online platforms, leading to a rise in the number of digital consumers.

The research points out that India's Digital Public Goods, such as the Open Network for Digital Commerce, Aadhaar, and UPI, have provided startups with the opportunity to create solutions that reach even the most remote parts of the country. The committee observed that a few dominant companies are acquiring significant control over the digital market. This dominance forces smaller companies and startups to depend on these larger entities, resulting in imbalances of power and unequal access to information.

Given this situation, the committee emphasized the importance of implementing careful regulatory measures to address anti-competitive practices by major tech firms, while also ensuring that the growth of emerging digital businesses, which could potentially become significant players globally, is not hindered. The existing framework of the Competition Act of 2002 may not be suitable for the rapidly evolving digital economy, as it was designed for traditional markets. Certain elements of this framework, like slow enforcement, may not be beneficial for digital markets. The committee also suggested creating procedures for consultation among regulatory bodies and improving the CCI's technical capabilities to effectively oversee digital markets. The goal is to strike a balance between fostering innovation and curbing anti-competitive behaviors in the digital landscape. Moving forward, it is essential to draft legislation that ensures fair competition while also promoting innovation.

Digital Competition Bill, 2024 :

Digital Competition Bill, 2024 in India has several features including

Identification of Systemically Important Digital Intermediaries (SIDs)¹⁵: SIDs are key players in the digital ecosystem, identified by factors such as their revenue, market capitalization, and operational scale. Recognizing SIDs is crucial for directing regulatory efforts toward those entities that significantly influence competition in digital markets. By concentrating on SIDs, the DCA aims to tackle issues related to market dominance, unfair practices, and the risk of anti-competitive behavior among major digital players.

Ex-ante Obligations: The DCA suggests implementing ex-ante obligations on SIDs to prevent anti-competitive practices before they arise. These obligations could involve limitations on self-preferencing (favoring their own products/services), deep discounting (selling products/services at greatly reduced prices), anti-steering (hindering users from accessing competitors' offerings), and exclusive tie-ups (restricting access to certain services). The DCA's goal is to create a fair competitive environment for all participants in the digital market by establishing ex-ante requirements that encourage competition, innovation, and consumer choice.

Merger Scrutiny: The DCA stresses the need for thorough examination of mergers and acquisitions involving SIDs to avoid monopolistic consolidation that could hinder competition and negatively impact consumer interests. By enhancing merger scrutiny, the DCA aims to ensure that mergers in the digital sector do not result in the emergence of dominant players capable of misusing their market power.

Regulation of Internal Policies: The DCA also includes measures to regulate the internal policies of SIDs concerning advertising, data management, and search practices. These regulations are designed to foster transparency, accountability, and fair competition within digital platforms. By monitoring internal policies, the DCA seeks to address issues related to data privacy, user rights, and the potential misuse of data by digital entities.

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021:

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 established new responsibilities for "significant social media intermediaries," which refer to platforms with more than 5 million users in India. These regulations were created under the IT Act, 2000, which typically protects intermediaries like social media platforms from liability for third-party content, provided they do not modify it. However, according to the new rules,

¹⁵ "Charting The Digital Frontier: Decoding India's Path To Digital Competition Law" *Jus Corpus Law Journal*

larger platforms are required to designate officers to handle user complaints and law enforcement requests, as well as ensure message traceability in specific situations.

Although these rules apply to all platforms with a substantial user base, they primarily focus on major tech companies such as WhatsApp, Facebook, YouTube, and Twitter, given their significant influence in India. The government's amendments in 2022 aimed to enhance grievance redress systems, with the goal of making these large tech companies more accountable for their activities in India.

The Need For Ex-Ante Competition Intervention In Digital Markets:

The Digital Competition Bill, 2024 aims to tackle the necessity for proactive regulation in India's swiftly changing digital markets¹⁶. Historically, competition law has concentrated on reactive measures, which involve taking action only after anti-competitive behavior has been identified. However, this Bill posits that in the realm of digital markets, proactive regulation may prove to be more effective, and it outlines the rationale behind this transition. It is mainly focused on the following:

1. Complementary Relationship Between ex-ante and ex-post Enforcement:

Proactive regulation involves establishing rules and guidelines before any anti-competitive actions take place, whereas reactive regulation deals with responses after such actions have occurred. The Committee emphasizes that these two approaches are not mutually exclusive; rather, they enhance one another. Sectoral regulators, who create industry-specific regulations, collaborate with competition authorities that uphold fair practices across various sectors. For instance, sectoral regulators, such as those in telecommunications or broadcasting, outline the necessary actions for businesses to promote healthy growth, while competition authorities ensure that companies do not engage in harmful practices like price-fixing or monopolistic behavior. In India, the digital market landscape is fragmented and lacks a unified regulatory framework, complicating efforts to maintain fairness and competition. The Committee noted that countries like the EU, with its Digital Markets Act, and the UK, with the Digital Markets Competition and Consumer Bill, have implemented distinct laws for the proactive regulation of digital markets. The Committee is contemplating similar legislation for India.

2. Challenges of Reactive Investigations:

Reactive enforcement typically occurs after a violation has taken place, which can lead to investigations that last months or even years before reaching a resolution. In the rapidly evolving digital markets, by the time an investigation is completed, the market dynamics may have already changed, allowing dominant players to solidify their positions. The damage inflicted on competition could be irreversible, potentially forcing smaller competitors out of the market. For instance, if a company is found to have misused its dominant position through anti-competitive pricing or exclusionary tactics, the harm may already be done, leading to the exit of smaller firms or new entrants and diminishing market contestability. Consequently, the Committee believes that early detection and intervention through proactive regulation would be more effective in preventing such harm before it occurs.

3. Limitations of Ex-Post Investigations:

Ex-post investigations are generally confined to specific complaints or cases presented by market participants, meaning that only isolated instances of anti-competitive behavior are addressed. This method fails to effectively tackle ongoing patterns of anti-competitive behavior by the same firms or similar practices across multiple firms in the sector. For example, if a large tech company consistently engages in harmful practices like bundling services or enforcing exclusive agreements with suppliers, each occurrence may require a separate investigation, resulting in inefficiencies and delays. A proactive, ex-ante framework could more efficiently address these recurring issues across the sector, leading to quicker resolutions and a more competitive market.

Committee's Recommendation:

In light of the challenges outlined, the Committee recommends establishing a new Digital Competition Act tailored specifically for digital markets. This proposed Act would facilitate proactive regulation (ex-ante intervention) of large digital enterprises that wield significant influence over the market.

¹⁶ Ministry of Corporate Affairs Government of India, "Report of the Committee on Digital Competition Law" 91 (2024)

II. CONCLUSION

The rapid growth of digital markets in India has highlighted significant shortcomings in the Competition Act, 2002, which was designed for a very different era. Originally focused on ex-post interventions—addressing anti-competitive conduct after it occurs—the Act struggles to keep pace with the dynamic and complex nature of today’s digital landscape. With over 759million active internet users, India has seen the rise of powerful digital enterprises that operate as platforms across various sectors, raising serious concerns about their market influence and anti-competitive practices. The recent 53rd Report by the Parliamentary Standing Committee on Finance has brought to light ten key anti-competitive practices by major tech companies, pointing out the need for a more robust competition framework. It highlights how digital markets often create a ‘winner-takes-most’ scenario due to strong network effects and economies of scale, leading to a market that favours incumbents and reduces competition.

Recognizing that an ex-post approach is inadequate in such a fast-moving environment, the Committee recommends monitoring the behaviour of large digital enterprises proactively. This shift towards ex-ante regulation is essential to prevent anti-competitive behaviours before they take hold. The proposal for a new Digital Competition Act is a crucial step in this direction, aiming to foster a fair and transparent digital ecosystem.

In summary, the forthcoming Digital Competition Bill, 2024, is poised to address the unique challenges posed by big tech companies and their potential abuse of dominant positions. By emphasizing proactive regulation, the Bill seeks not only to promote healthy competition but also to safeguard consumer interests. This new regulatory approach is vital for ensuring that India’s digital economy remains vibrant, equitable, and innovative in the future.