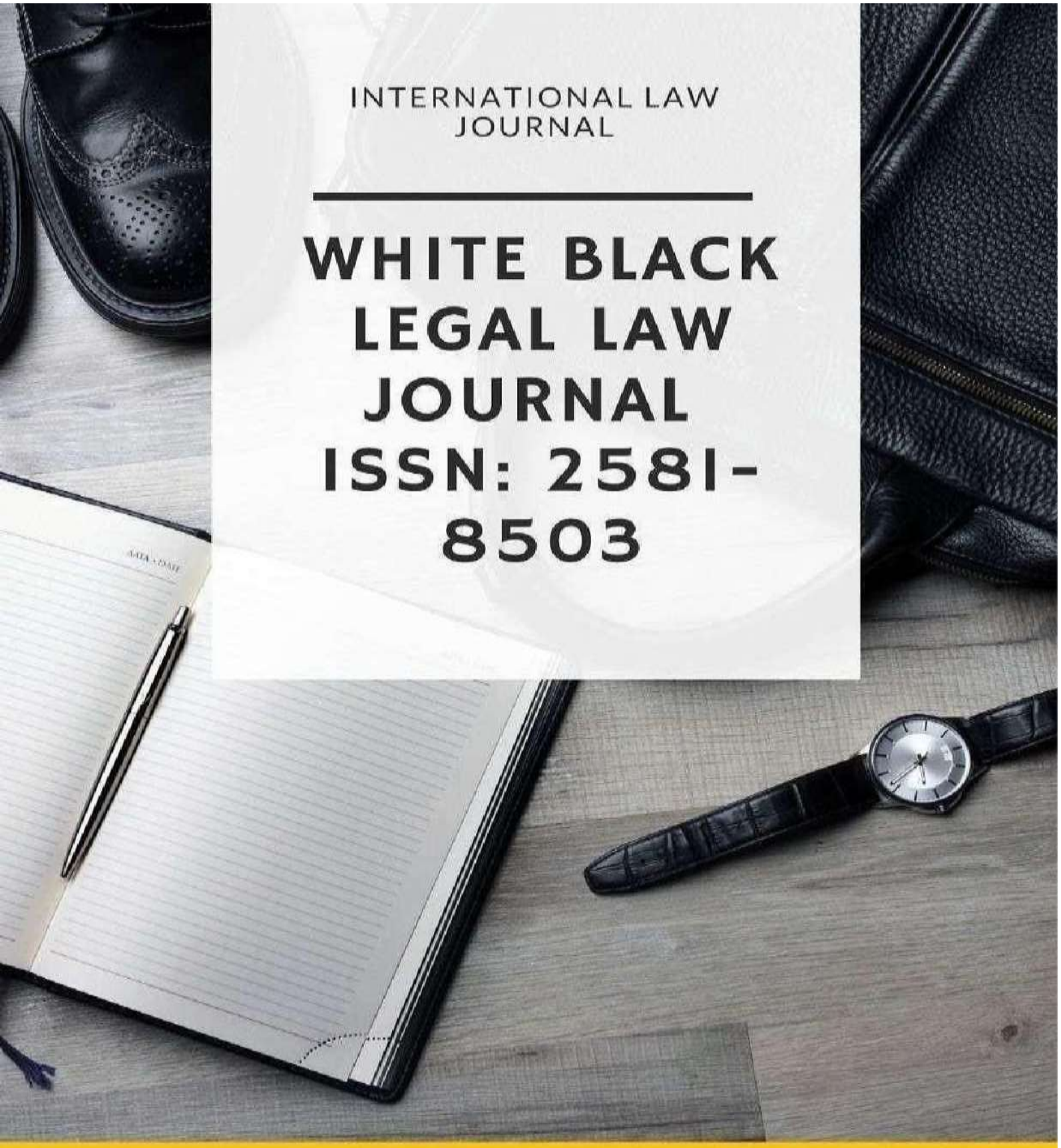

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REDEFINING CONSUMER HARM IN THE DIGITAL ERA: AN INDIAN COMPETITION LAW PERSPECTIVE-

AUTHORED BY - ARYAN SHARMA

Abstract

The paper critically reviews the development and modern application of the consumer welfare standard under competition law, with special reference to India's fast-developing digital economy. Tracing its origin in neoclassical economic thought and the legacy of the Chicago School, the study examines the evolution of the consumer welfare standard—originally focused on price and output—to become the foundation of antitrust enforcement worldwide and in India under the Competition Act, 2002. The research emphasizes how Indian jurisprudence and enforcement practices, especially Sections 18 and 19(3), have implemented this standard, and compares narrow price-focused approaches with expansive perspectives that include innovation, choice, and long-term market efficiency.

The article determines the inadequacies of the classical approach when extended to digital markets, where goods tend to be provided gratis, but consumer injury occurs through data abuse, algorithmic manipulation, privacy loss, and foreclosure. On the basis of case studies of Google, WhatsApp, Amazon, and cross-national comparisons like Meta in Germany and Apple in the EU, the study highlights the insufficiency of traditional antitrust mechanisms in tackling non-price damages. The research recommends an evolving framework of consumer injury—engaging privacy, autonomy, and fairness—backed by behavioural economics and ex-ante regulation. It ends by suggesting a comprehensive, future-proof model of competition law in India that balances consumer protection and market contestability in the digital era.

1. Introduction

With the Indian economy undergoing a value-driven change propelled by digitalization, conventional legal paradigms, such as competition law, are being put to the test against novel business models and technological advancements. The rise of monopolistic digital platforms, spread of data-driven services, and growing dependence on algorithms and artificial

intelligence have entirely reshaped market dynamics and consumer interaction with markets. Whereas previous competition laws were formulated for traditional, price-based markets, current digital ecosystems necessitate a rethinking of the conception, identification, and treatment of consumer harm. This study attempts to critically assess the sufficiency of the existing consumer welfare standard under Indian competition law in the wake of these changes and to consider how the framework can be revised to respond to the dynamics of the digital age.

1.1 Background and Significance

The idea of consumer welfare has long revolved around price, output, and efficiency—values deeply ingrained in neoclassical economics and applied through the Chicago School's impact on international antitrust systems. But in online markets, most goods and services are seemingly provided for free, with consumers remunerating instead in data, attention, and behavioral inputs. This has resulted in new types of harm, such as exploitation of personal data, contraction of consumer choice, market manipulation by algorithmic design, and erosion of choice through lock-in effects and market tipping.

In India, the Competition Commission of India (CCI) has increasingly found it difficult to apply prevailing doctrines to platform dominance cases, including the Google Android case or the WhatsApp privacy policy change. These trends highlight the importance of this research, which seeks to redefine consumer harm in a way that reflects non-price aspects and is in line with international regulatory developments.

1.2 Objectives of the Study

The overall goal of this study is to examine the shortcomings of the classical consumer welfare test within the setting of India's fast-developing digital markets and to recommend a more comprehensive approach that incorporates non-price considerations like privacy, choice, quality, and innovation. In particular, the research will:

- Critically review the development of consumer welfare in competition law and its application in the digital economy.
- Evaluate how Indian judiciary and the CCI have understood consumer harm in digital market cases.

- Examine international trends of redefining consumer harm and draw lessons for Indian law and policy.
- Suggest policy and legal changes, such as ex-ante instruments, inter-regulatory harmony, and capacity development, to counter current consumer harm in digital markets.

1.3 Methodology and Scope

This research employs a doctrinal and comparative research approach, leveraging primary materials such as the Competition Act, 2002 (amended), orders of CCI, Supreme Court decisions, and the Digital Personal Data Protection (DPDP) Act, 2023. It further engages with secondary material consisting of academic commentaries, government reports (such as the 53rd Parliamentary Standing Committee Report), and policy documents.

Case studies like the Google Android bundling case, the WhatsApp privacy policy inquiry, and Amazon/Flipkart's preferential listings are utilized to demonstrate how current enforcement tools interact with changing market practices. Comparative references are further made to the European Union's Digital Markets Act, the German FCO's Facebook ruling, and other jurisdictions that are dealing with comparable issues

The study's field of focus is limited to the Indian enforcement and regulatory environment, but leverages global experiences to position recommendations applicable to domestic reform. Although the emphasis is on digital markets, the research is kept anchored on general competition law principles to result in a balanced and legally sound analysis.

1.4 Research Questions

The following guiding questions underpin this research:

1. How has the consumer welfare standard of Indian competition law changed, and to what extent does it reflect the nuances of digital markets?
2. What types of consumer harm are new in India's digital economy that are not well captured by the classical price focus?
3. How have the CCI and Indian courts understood and applied the theory of consumer harm in recent digital market cases?
4. What are the lessons drawn from international regulatory experience that can help reframe consumer harm in India?

5. What are the legal, institutional, and policy changes required to build a future-oriented, comprehensive framework of consumer harm that promotes fairness, contestability, and innovation in India's digital economy?

2. Evolution of the Consumer Welfare Standard in Competition Law

2.1 Origins in Neoclassical Economic Theory

Neoclassical economic theory serves as the foundation for the consumer welfare standard, which has come to dominate discussions of competition law in the modern era.[1] Neoclassical economics, which emerged in the late 19th and early 20th centuries, signalled a change in emphasis from the classical school's emphasis on production costs to one that was more focused on utility and consumer preferences. The underlying premise of this system is that while corporations seek to maximise profits, people act rationally in an effort to maximise their utility. It is believed that when markets are competitive, resources are allocated optimally, with supply and demand forces generating equilibrium.[2]

One of the defining characteristics of neoclassical economics is that the price of goods and services does not come solely from production factors but from consumers' satisfaction or utility. This relocation of the consumer as a central economic player created the intellectual basis for integrating consumer-centric principles into policy formulations, even in the field of competition law. As a result, regulatory systems and market interventions came to be more concerned with consumer outcomes, especially price, quality, and choice.[3]

The consumer welfare standard, as a policy and legal doctrine, became prominent in the United States in the mid-20th century, to which the Chicago School of economics made meaningful contributions. Robert Bork, in his influential book The Antitrust Paradox (1978), contended that the main objective of antitrust policy ought to be the promotion of consumer welfare, as measured largely by indicators like price levels, production, and product quality.[4] This was a break from previous antitrust policies, which were more structural in focus and tended to

[1] Deborah Healey et al., *Resale Price Maintenance (RPM)*, CONCURRENCES, https://www.concurrences.com/en/dictionary/resale-price-maintenance-rpm.
[2] Herbert Hovenkamp & Fiona Scott Morton, *The Life of Antitrust's Consumer Welfare Model*, PROMARKET (Apr. 10, 2023), https://www.promarket.org/2023/04/10/the-life-of-antitrusts-consumer-welfare-model/.
[3] Surendra U. Kanstiya, *Consumer Protection under the Competition Law*, INCSOC.NET, https://incsoc.net/pdf/consumer-protection-under-the-competition-law-surendra-knastiya.pdf.
[4] Herbert Hovenkamp & Fiona Scott Morton, *The Life of Antitrust's Consumer Welfare Model*, PROMARKET (Apr. 10, 2023), https://www.promarket.org/2023/04/10/the-life-of-antitrusts-consumer-welfare-model/.

suppose that size or dominance by large corporations necessarily produced competitive harm. Rather, Bork and his generation argued that business behavior would be anti-competitive only if it leads to harm to allocative efficiency—basically, if it results in consumers paying higher prices, producing less, or having lower-quality products. This shift from a structuralist to an efficiency-based analysis reoriented how competition agencies tested mergers, monopolies, and business behavior.[5]

The consumer welfare standard is also reflected in the development of Indian competition law. With the passage of the Competition Act, 2002, India officially adopted a system for encouraging and maintaining market competition, safeguarding consumer protection, and preserving the freedom of trade. The objectives of the Act, in its preamble and as reinforced through judicial interpretations, are the elimination of anti-competitive practices that have an appreciable adverse effect on competition (AAEC). The Competition Commission of India (CCI) set up under this Act is responsible for evaluating anti-competitive behaviour with a specific focus on whether such behaviour leads to the accrual of benefit to consumers.

The embracing of consumer welfare as a core evaluative standard in Indian competition law was importantly informed by the proposals of the Raghavan Committee, which emphasized that the final objective of competition policy must be the promotion of consumer welfare. Indian case law and enforcement tradition have since come to mirror this focus, with regulatory attention being focused on practices that restrict market efficiency and negatively impact consumer interests. Yet scholarly commentary has criticized that in practice, the CCI tends occasionally to equate consumer welfare with consumer protection, mostly responding to immediate and tangible offenses—like deceptive advertising or abusive trade practices—more so than grapple with the more general economic notion of maximizing welfare through healthy competition.

This is especially relevant in the context of digital markets, where the classical measures of price, output, and market share might no longer be enough to define the detailed aspects of consumer damage. Digital business models tend to be built around zero-price products, are strongly dependent on data-driven tactics, and compete on dimensions such as innovation,

[5] B. Jayant Kumar & Garima Panwar, *An Interface between Competition Law and Consumer Welfare*, MANUPATRA, https://docs.manupatra.in/newsline/articles/Upload/D44390B0-C064-46CF-ADE3-FC3DE33C4366.pdf

platform availability, and user experience. Accordingly, there is increasing acceptance that the finite, price-oriented conception of consumer welfare based on neoclassical economics and the Chicago School can no longer suffice. Under the digital revolution, rethinking consumer harm requires a broader approach to encompass non-price dimensions including privacy, control of data, innovation, and extended-term consumer choice.[6]

Briefly, the consumer welfare standard has its roots in neoclassical economic theory's focus on rational choice and utility maximization, was developed strongly in line with the Chicago School's concern with price-based results, and finally ended up in the Indian competition regime as a product of legislative and institutional dynamics. Though this paradigm has brought analytical sophistication and economic precision to antitrust enforcement, its extension to digital markets poses significant issues regarding the adequacy of this framework to deal with the multidimensional nature of consumer harm in the twenty-first century.

2.2 The Price-Centric Model: Lower Prices and Output Efficiency

The price-based model of consumer welfare in competition law finds its roots in the central economic hypothesis that competitive markets result in lower prices and greater output, thus ensuring maximum efficiency and consumer gain.[7] This model is born out of neoclassical economic theory and assumes that consumer welfare is maximized when companies, driven by competition in the market, compete to cut costs and provide better prices to win consumer approval. At the intersection of demand and marginal cost is the point of allocative efficiency, optimal output and pricing, resulting in maximum consumer surplus and minimum distortions in the market.

Price here emerges as a core metric to gauge consumer benefit or harm. Prices that are low are not just seen as consumer savings but as an indication of competitive market operations. Companies in these markets are driven to innovate and become more efficient, which translates into cost savings passed along to consumers. As a result, competition authorities regularly use

[6] Ritika Bansal, *Beyond Bargains: The Hidden Dangers of India's Competition Act and the Need for Smarter Antitrust Enforcement*, NLIU L. REV. BLOG (Feb. 7, 2025), https://nliulawreview.nliu.ac.in/blog/beyond-bargains-the-hidden-dangers-of-indias-competition-act-and-the-need-for-smarter-antitrust-enforcement/.

[7] Lawrence Wu and Craig Malam, 'An Economic Perspective on the Usefulness of the Consumer Welfare Standard as a Guiding Framework for Antitrust Policy' (2021) 31(2) *Competition: Antitrust and Unfair Competition Law Journal* https://calawyers.org/publications/antitrust-unfair-competition-law/competition-fall-2021-vol-31-no-2-an-economic-perspective-on-the-usefulness-of-the-consumer-welfare-standard-as-a-guiding-framework-for-antitrust-policy/.

price impacts—whether an activity increases or decreases prices—as a main point of reference when assessing anti-competitive behavior. Behavior or mergers that lead to higher prices, limited output, or lowered quality are assumed to harm consumer welfare and must be scrutinized by regulators. It privileges concrete, immediate economic metrics like price and output over the assessment of the legitimacy of business behavior under competition law.

The theory of output efficiency is a complement to the emphasis on price. It is the degree to which markets provide the amount of goods and services that are wanted by consumers, at the lowest prices sustainable. In a properly functioning competitive market, output is optimal and the deadweight loss potential—inefficiencies due to underproduction or overcharging—is held at a minimum.[8] In contrast, where markets are distorted by cartels, monopolies, or other anti-competitive business practices, output is intentionally curtailed to increase price levels. For instance, a cartel may control supply in order to increase prices from a competitive price level (Pc) to a monopolistic price level (Pm), output falling from Qc to Qm. This not only diminishes consumer surplus but also misallocates resources, undercutting the overall economic goal of efficiency.[9]

Current antitrust enforcement, such as merger analysis and probes into abusive conduct, still depends heavily on this price-oriented model. Efficiency arguments presented by companies—e.g., cost reductions or productivity improvements—are evaluated in terms of whether they are passed on in lower prices or enhanced output. Regulators like the Competition Commission of India (CCI) employ these metrics to establish whether a merger or practice promotes or stifles consumer well-being. The focus continues to be on observable outcomes, such as pricing trends, production levels, and quality of products, which provide a practical foundation for enforcement and judicial application.[10]

Though its starting point is valuable, the price-focused model has more and more been criticized as incomplete, especially in digital markets. The development of platform-based, data-driven business models pushes the conventional dependency on price and quantity to serve

[8] Deborah Healey and others, *Resale Price Maintenance (RPM)* (Concurrences) https://www.concurrences.com/en/dictionary/resale-price-maintenance-rpm.

[9]

[10] Ritika Bansal, *Beyond Bargains: The Hidden Dangers of India's Competition Act and the Need for Smarter Antitrust Enforcement*, NLIU L. REV. BLOG (Feb. 7, 2025), https://nliulawreview.nliu.ac.in/blog/beyond-bargains-the-hidden-dangers-of-indias-competition-act-and-the-need-for-smarter-antitrust-enforcement/

as sufficient proxies for consumer well-being. Digital markets contain numerous services that are provided at zero monetary price, which makes it more difficult to measure consumer benefit. The existence of extraneous costs—e.g., extraction of data, monitoring, or manipulation of consumer behavior—poses issues that price measurements can't resolve. In addition, the multi-sided market dynamics, where platforms address multiple sets of users with interdependent pricing and network effects, make it even more difficult to conduct welfare analysis. To illustrate, platforms can provide free services to users and charge on other sides of the market, making it difficult to discern consumer harm or benefit.[11]

India's competition law regime has taken the first steps towards addressing these issues by moving beyond its conventional price-output lens to a more comprehensive analysis. Realizing the shortfalls of a strictly quantitative methodology, the CCI has begun incorporating qualitative aspects into its evaluation. These involve innovation potential, product quality, consumer choice, and long-term market effects. The emphasis has moved towards a more complete analysis of consumer welfare in consideration of both short-term and long-term implications, particularly in markets where technology is changing at a fast pace and business models are complicated. Institutional responses like the creation of a Digital Markets and Data Unit at the CCI also point towards willingness to create sector-specific tools and ex ante interventions to pre-emptively target competition concerns.

In operational terms, the transformation away from price-based analysis is evidenced by a more expansive view of market definition, more qualitative measures, and identification of new types of market power. Consumer benefit evaluations now include factors such as privacy of data, ease of platform access, innovation, and broader market system effects. This change emphasizes the necessity for regulatory adaptability and evolution of advanced enforcement mechanisms that are able to pick up on the richness of digital competition.

In short, although price-based thinking has traditionally generated a solid and measurable system of evaluating consumer well-being and market welfare, its utility in the digital world is increasingly under scrutiny. As markets move away from conventional forms, competition law

[11] Mohit Kumar Manderna and Kritika Vatsa, 'Competition Law and Consumer Law: Remedies for Consumer Welfare and Differences in the Acts' (Global Law Review, 26 November 2023) https://gblrscclp.in/2023/11/26/competition-law-and-consumer-law-remedies-for-consumer-welfare-and-differences-in-the-acts/.

in India is slowly adopting a more integrated approach that attempts to redefine consumer injury in terms of innovation, use of data, and non-price factors, thus bringing regulatory intervention in line with the sophistication of contemporary marketplace realities.

2.3 Consumer Welfare in Indian Competition Law: Statutory Framework under Section 18 and Section 19(3) of the Competition Act, 2002

The legislative basis of consumer well-being in India's Competition Act, 2002 lies mainly in Section 18 and Section 19(3). These provisions together express the Indian parliament's intention to bring consumer interest to the core of competition law enforcement. While Section 18 outlines the general responsibilities of the Competition Commission of India (CCI), Section 19(3)[12] specifies the particular factors for determining anti-competitive agreements and their effects on market conditions and consumer well-being.[13]

Section 18: Mandate to Protect Consumer Interests

Section 18 puts a responsibility on the CCI to uproot practices that have anti-competitive effects and enhance and maintain market competition. Pivotal to this charge is the goal of safeguarding consumer interest. The provision tasks the Commission with the duty to take action against a range of undesirable market conduct—such as predatory prices, output restriction, and unfair trade practices—that distort competition and in the long run prejudice consumers.

In addition, the CCI is also authorized to suo motu or on complaint investigate and punish cases where dominant firms indulge in exclusionary practices or discriminatory pricing. The fundamental aim of Section 18 is not merely to provide price and output efficiency but also to safeguard consumer choice, promote innovation, and provide a level playing field in the market.

Section 19(3): Consumer-Centric Parameters for Antitrust Assessment

Section 19(3) serves a central function in assessing whether or not an agreement, most notably vertical arrangements like exclusive supply or distribution agreements, would have an Appreciable Adverse Effect on Competition (AAEC). It outlines a detailed structure which weighs pro-competitive reasons against possible anti-competitive consequences through a rule

[12] Competition Act, 2002, Section 19(3).
[13] Competition Act, 2002, Section 18.

of reason.

Some of the factors listed under this section are expressly connected to consumer welfare, such as

- The formation of entry barriers or foreclosure of the market, which may limit consumer choice and reduce innovation.
- The accumulation of benefits to consumers, like cost-effectiveness or service quality enhancement.
- The effect on market access, which determines product variety and price.

Such an analysis guarantees that competition enforcement does not invariably target structural features of the market but reflects on wider implications for consumer interests.

Interplay Between Section 18 and Section 19(3)

The symbiotic implementation of Sections 18 and 19(3) gives a twofold mechanism to safeguard consumers. Whereas Section 18 provides the broad policy mandate of securing consumer interests and promoting competition, Section 19(3) prescribes the working parameters to analyze the real effect of agreements on market competition and consumers.

Aspect	**Section 18**	**Section 19(3)**
Focus	Broad Mandate to promote competition and protect consumer.	Specific criteria to assess anticompetitive agreements.
Nature of Harm	Direct Harm (Predatory Pricing, Abuse of Dominance)	Indirect effects (Market Foreclosure, reduced innovation)
Enforcement Mechanism	Empowerment to act suo motu or via complaint	Assessment through a rule of reason balancing test

Procedural Mechanisms and Consumer Redress

Consumers can seek redress through strong procedural channels provided by the Competition Act. According to Section 19(1)(a), any consumer or consumer association may complain about anti-competitive behaviour to the CCI. By guaranteeing participatory enforcement, this

direct access strengthens the CCI's position as a quasi-judicial organisation dedicated to consumer protection.

Consumer protection is a key component of competition enforcement under Section 18, since the Indian judiciary, including the Supreme Court, has repeatedly maintained the CCI's consumer welfare duty.

Contemporary Applications and Emerging Trends

In order to accommodate the complexity of contemporary digital markets, the applicability of Sections 18 and 19(3) has changed. These days, traditional worries about output and price are joined by difficulties like:

- zero-price markets in which the trading currency is customer data rather than cash.
- Multi-sided platforms, where user groups' interdependencies necessitate a more complex assessment of harm.
- Even in supposedly open digital ecosystems, network effects and data-driven market power have the ability to lock out rivals and establish supremacy.

To meet these challenges, the CCI has progressively taken into account non-price aspects of consumer injury, like privacy, quality, innovation, and consumer sovereignty. Scrutiny of tech majors and online platforms is a demonstration of this doctrinal flexibility, with the CCI being willing to be transformative without losing sight of its statutory imperatives.[14]

Tools of Enforcement and Directions Ahead

In pursuing its statutory mandate, the CCI draws upon a range of tools of enforcement that includes:

- Cease and desist orders to stop anti-competitive activities.
- Structural and behaviour remedies specifically designed to reinstate competition.
- Improved investigatory powers, e.g., powers to call for documents, dawn raids, and digital evidence collection.

Forward-looking, the Indian competition regime is set to be further reformed to better address

[14] Kashish Makkar, *Competition Commission of India's Self-Devised Disability in Investigation of Buyers' Anti-Competitive Agreements*, CONCURRENCES (2021), https://awards.concurrences.com/IMG/pdf/21._competition_commission_of_india_s_self-devised_disability_in_investigation_of_buyers_anti-competitive_agreements.pdf.

the intricacies of digital environments. Potential improvements include ex ante regulation mechanisms, sectoral guidelines, and improved conformity with global best practice, all of which intend to make consumer welfare an ever-changing and dynamic benchmark of Indian competition policy.

Conclusion

Sections 18 and 19(3) of the Competition Act, 2002, collectively provide a wide-ranging and dynamic statutory platform for safeguarding consumer interest in India. Through the incorporation of wide-ranging policy goals as well as exhaustive analytical parameters, the Indian competition system strives to promote efficient, equitable, and consumer-sensitive markets. As digitalization transforms market structures and consumer interactions, such a framework needs to keep evolving so that competition law remains sensitive to both conventional and new aspects of consumer harm.

2.4 Judicial and CCI Interpretations: Narrow vs Broad Views

The development of the consumer welfare test in India has been marked by a seminal divergence in interpretative stances followed by the judiciary and the Competition Commission of India (CCI). This split is largely marked by the tension between a narrow conception of consumer welfare that zeroes in on short-term price impacts and concrete consumer injury, and a more expansive conception that encompasses long-term market health, innovation, and efficiency.

Narrow View: Price-Centric and Immediate Protection

The narrow interpretation, often seen in the practice of CCI enforcement, focuses on a formalistic, price-centric analysis of competition issues. In this interpretation, consumer welfare tends to be equated with consumer protection, leading to an orientation toward direct, short-term effects—e.g., price cuts, better access, and removal of unfair trade practices.

The key features of the narrow approach are:

Legal. Formalism: Strict adherence to statutory provisions with minimal regard to qualitative or context-specific market forces.

Price and Output Emphasis: Excessive use of quantitative measures such as price levels and production volume to determine appreciable adverse effect on competition (AAEC).

Exclusion of Market Substitutes: Limited regard to non-price aspects as innovation, access

to the market, and exploitation of data.

This interpretation is reflected in cases like:

- **Subhash Yadav v. Force Motors Ltd**[15]. – The CCI dismissed the complaint, noting that consumer dissatisfaction alone did not constitute a competition concern.
- **Sanjeev Pandey v. Mahindra & Mahindra**[16] – The absence of market-wide anti-competitive effects led to dismissal, despite individual consumer harm.

These decisions underscore the CCI's restrictive jurisdiction, drawing a clear line between competition law and consumer protection law.

Broad View: Long-Term Welfare and Market Efficiency

Conversely, a wider reading—accepted by the judiciary and scholarly literature—understands consumer welfare in terms of dynamic market efficiency, innovation, and sustainable competitive conditions. This is closer to the objectives enshrined in the Preamble and Section 18 of the Competition Act, 2002, that emphasize promoting competition, safeguarding consumer interests, and facilitating freedom of trade.

This reading emphasizes:

- **Market-Centric Approach**: Judgment of structural and behavioural features of markets, not just price effects.
- **Considerations of Innovation and Quality**: Awareness of innovation, improvements in quality, and consumer option as central to welfare.
- **Comprehensive Definition of 'Consumer':** Both end-consumers and commercial purchasers being considered within the analysis.
- Judicial judgments have increasingly moved in this broad direction, as illustrated by:
- **CCI v. Steel Authority of India Ltd. (SAIL)**[17]: The Supreme Court emphasized that consumer welfare includes market health and trade freedom—not merely low prices.
- **Coal India Ltd. (CIL)**[18]: Reinforced the applicability of competition law to state monopolies and emphasized long-term efficiency and neutrality.

[15] Case No. 32 of 2012 Dated :057/012012
[16] Case No. 21 of 2018
[17] 2010 INSC 587
[18] 2023 SCC OnLine SC 740,.

- **National Stock Exchange (NSE) Case**[19]: Adopted an ecosystem-wide view in determining abuse of dominance, factoring in innovation and market structure.

CCI's Evolving Approach

In spite of its historical leanings towards tradition, the CCI has also displayed trends of adaptive change, more so under the digital economy:

Specialized Units Creation: The creation of the Digital Markets and Data Unit (DMDU) is evidence of institutional change in greater market insight.

Globalization of Best Practices: The CCI has started using sophisticated analytical tools and taking insights from comparative antitrust jurisprudence, which is evidence of movement towards more evolved enforcement practices.

Impact of Interpretative Divergence

The conflict between narrow and broad approaches noticeably affects competition results:

Aspect	**Narrow View**	**Broad View**
Focus	Price, Output, and Immediate Harm	Market efficiency, innovation, long term effects
Time Horizon	Short-term	Long term
Scope of Consumer	Often Limited to end users	Includes intermediaries and commercial buyers
Market Effects	Often overlooked	Central to analysis
Welfare Standard	Conflicted with protection	Distinct and market based

Although narrow readings are better for legal certainty and administration, they have the potential to overlook obscure but significant harms within fast-paced digital markets. The broad approach, on the other hand, favors functioning markets holistically, which makes it a better fit for handling the intricate and multi-faceted nature of digital consumer harm.

[19] Case Number 47 of 2018

Conclusion

The interpretive split between the CCI and the judiciary merely mirrors an underlying tension within Indian competition law. As markets become increasingly data-driven, platform-based, and innovation-oriented, a movement toward a broader consumer welfare standard is critical. Judges and policymakers need to keep on encouraging convergence between these viewpoints to ensure that enforcement of competition is still sensitive to the changing landscape of the digital economy and protects both current and future consumer interests.

3. The Digital Economy and Emerging Sources of Consumer Harm

3.1 Data as a Currency: Free Services and the Hidden Cost

In the digital economy's architecture, one sees a unique departure from conventional models in the shape of services that are financially "free" to the consumer. The model is not cost-free by any means. Digital platforms have led the way towards a system in which data, not currency, comes to serve as the exchange medium[20]. In exchange for access to nominally free services like social media, search engines, and streaming, consumers supply enormous amounts of personal data. This conversion of information into a quasi-monetary equivalent has created subtle but important issues for consumer welfare and competition in markets, thus deserving antitrust attention.

This data-driven model functions by the all-pervasive harvesting and monitoring of shopper habits—everything from browsing and geographic location to demographics. Monetization of the data allows businesses to sharpen targeting methodologies for adverts, tailor content to maximize interaction, develop new products, and gain significant market insights.[21] In some cases, this information is shared or sold on to third-party advertisers and data brokers, building a vast, impenetrable system of commercial monitoring.

Although the consumer does not make a direct cash payment, the costs incurred are significant and multifaceted. One of the main issues is privacy erosion. It is the case that most consumers are unaware of how much data is being gathered, nor can they grasp the consequences of their online trace, thanks to impenetrable privacy policies and complicated consent procedures. This

[20] Lydia Montalbano, 'Transparency in a Digitally Intertwined World: A Hybrid Approach to Consumers' Protection' (2021) 9(8) *Open Journal of Social Sciences* https://www.scirp.org/journal/paperinformation?paperid=111602.

[21] Deepak Mishra and others, *State of India's Digital Economy (SIDE) Report, 2025* (Indian Council for Research on International Economic Relations, 2025) ISBN 978-81-954132-5-6.

situation is a typical instance of information asymmetry, where companies possess major informational and technological superiority over users.[22] The disequilibrium not only undermines personal autonomy but also builds market power by solidifying incumbents who have massive data warehouses.

Moreover, the feedback loops instantiated through data-driven algorithms can support user manipulation by means of hyper-personalized content fueled by engagement-optimizing algorithms.[23] These can reinforce misinformation, consolidate ideological echo chambers, and push consumer decisions in directions that might be at odds with their real interests. In other instances, companies institute "pay-for-privacy" models—providing protection of data as an add-on feature—thus commodifying privacy and heightening digital inequality, as only wealthier consumers have enough purchasing power to support data protections.

From an antitrust perspective, the use of data as a currency complicates traditional market analysis. Traditional competition law frameworks, which predominantly rely on price effects to assess harm, struggle to accommodate these non-price dimensions.[24] The capacity of leading companies to gather and utilize consumer information without much transparency has raised issues of entry barriers and the establishment of 'data monopolies.' New entrants usually do not have access to equivalent datasets, which blocks innovation and affects efficient market entry. The aggregation of data, therefore, not only causes concealed consumer harm but also distorts market dynamics by consolidating dominant players and minimizing consumer choice.[25]

Policymakers and regulators have begun to recognize such complexities. The European Union's General Data Protection Regulation (GDPR), and others globally, attest to a developing understanding that data protection and consumer rights are converging. But the lack of clear integration between regulation of data and competition law still obstructs meaningful enforcement. Successful regulatory action will involve a rethink of competition instruments to provide for data as a competitive resource and to make certain that consumers are not taken

[22] Karen Webster, 'The Five Not-So-Obvious Things That Will Change the Digital Economy in 2025' (PYMNTS, 6 January 2025) https://www.pymnts.com/digital-payments/2025/the-five-not-so-obvious-things-that-will-change-the-digital-economy-in-2025/.
[23] Federal Trade Commission, *AI and the Risk of Consumer Harm* (3 January 2025) https://www.ftc.gov/policy/advocacy-research/tech-at-ftc/2025/01/ai-risk-consumer-harm.
[24] Competition and Markets Authority, *Algorithms: How They Can Reduce Competition and Harm Consumers* (19 January 2021) https://www.gov.uk/government/publications/algorithms-how-they-can-reduce-competition-and-harm-consumers/algorithms-how-they-can-reduce-competition-and-harm-consumers.
[25] Statute: Competition Act, 2002, Section 19(3).

advantage of in the name of "free" services.

At its core, the digital economy's dependence upon data as a currency places real, though non-monetary, costs on consumers. Those invisible costs take the form of declining privacy, diminished autonomy, and diminished choice—forces that are integral to consumer well-being and the competitive process. Remedying such harms requires both conceptual and procedural enlargements of antitrust policy to secure equitable and just results in the data marketplace.

3.2 Non-Price Harms: Privacy Invasion, Algorithmic Discrimination, and Choice Architecture

Contemporary competition law has historically been all about price and output analysis. Increasingly, however, the digital economy requires a wider conceptual canvas to encompass "non-price harms" as well. These harms—elusive, intangible, and grounded in technological obscurity—are profound threats to consumer well-being and market integrity. Foremost among them are privacy intrusions, discriminatory algorithms, and manipulative choice architecture. All these phenomena test the sufficiency of current consumer protection and antitrust policies. Privacy Invasion is one of the most ubiquitous types of non-price injury in the online market. Online platforms systematically harvest, aggregate, and process personal information through algorithms that lie outside consumer awareness and understanding.[26] Although personalization can enhance the user experience, it tends to happen without explicit consent, thus opening individuals to risks like unauthorized disclosure, profiling, and commercial monitoring. Such activities constitute a systemic interference with personal agency, with profound data sovereignty and human dignity implications. In antitrust parlance, the mass commodification of privacy could be used as an indicator of diminished consumer welfare, especially if dominant platforms subject us to such practices without presenting meaningful alternatives.

Algorithmic discrimination closely follows on the heels of privacy concerns, where machine learning algorithms generate biased results that can entrench existing disparities. Although algorithms may be able to increase efficiency and decrease subjectivity, their results are only as equitable as the data used to train them. Biased or partial data sets can result in differential

[26] Nicol Turner Lee, Paul Resnick and Genie Barton, 'Algorithmic Bias Detection and Mitigation: Best Practices and Policies to Reduce Consumer Harms' (Brookings Institution, 22 May 2019) https://www.brookings.edu/articles/algorithmic-bias-detection-and-mitigation-best-practices-and-policies-to-reduce-consumer-harms/.

pricing, access, or service quality on the basis of race, gender, income level, or other protected attributes. [27]For instance, a platform may present higher prices or lesser-quality products to consumers inferred as less wealthy or less digitally savvy. Such leveraging of informational asymmetries disproportionately harms marginalized groups, producing structurally embedded discrimination hard to perceive or correct through traditional legal mechanisms.

The design of digital platforms themselves can act as an instrument of manipulation through so-called choice architecture. This is about the user interface, search rankings, and recommendation algorithms subtly shaping consumer behavior. Frequently designed to optimize engagement or revenue, they can tilt the choice environment in a way that favors platform-sponsored content or favored vendors, regardless of the user's optimal interest. When consumers are nudged—consciously or unconsciously—to make nonoptimal choices, the loss is greater than the sum of individual transactions. It distorts market signals and lowers the incentive on companies to compete on merit, thus diluting the competitive process.[28]

These harms are not abstract. Research and inquiries have shown that algorithmic systems have the potential to cause systemic discrimination in creditworthiness, employment, and housing. In competition law, this disputes the underlying premise that consumer choice in digital markets is free and informed. If large firms use consumer vulnerabilities algorithmically, it is essentially an abuse of market power—even when there are no overt price increases.

In addition, such non-price harms are exacerbated by the detection and redress difficulties. Privacy intrusion and biased algorithms tend to be hidden in code layers and embedded in proprietary systems, as opposed to price gouging or output restriction. Such obscurity requires novel instruments for competition regulators, such as algorithm audits, data access requirements, and inter-disciplinary collaboration with privacy regulators.[29]

In summary, the digital economy's transformation towards individualized, algorithmic ecosystems has created insidious but material types of consumer harm beyond classical price-

[27] Binbin Sun and others, 'Understanding the Impact of Algorithmic Discrimination on Unethical Consumer Behavior' (NCBI, 2025) https://pmc.ncbi.nlm.nih.gov/articles/PMC12024391/.
[28] Laurie Clarke, 'Here's How Algorithms Can Harm Consumers and Damage Competition' (Tech Monitor, 27 January 2021) https://www.techmonitor.ai/digital-economy/how-algorithms-can-harm-consumers-damage-competition.
[29] Oren Bar-Gill and others, 'Algorithmic Harm in Consumer Markets' (Oxford Business Law Blog, 25 April 2023) https://blogs.law.ox.ac.uk/oblb/blog-post/2023/04/algorithmic-harm-consumer-markets.

oriented analysis. Privacy intrusions, discriminatory algorithms, and manipulative design practices erode consumer well-being, decrease fairness, and consolidate digital monopolies. As such, they necessitate a transformation of antitrust enforcement—one which can effectively integrate non-price harms into its assessment and remedial paradigm to protect competition and consumer interests in the algorithmic era.

3.3 Market Tipping and Lock-In Effects: Harm to Long-Term Consumer Choice

In a digital economy, market structures can tip in a matter of days from competition to concentration thanks to the presence of strong network effects. Market tipping describes this situation, where a firm or platform achieves a critical mass of users and then becomes dominant in a market.[30] As soon as the tipping point is reached, user inertia and scale advantages make it extremely difficult for new entrants to enter or grow. Consequently, a "winner-takes-all" situation ensues that sets the stage for monopolistic domination. This tipping effect is especially transparent in markets such as social media, online shopping, and search engines, where customer interaction and data build momentum for platform dominance.

Lock-in effects also solidify this dominance. These occur when consumers incur significant switching costs that render it difficult or even harmful to switch service providers.[31] In digital markets, such costs need not be monetary; they involve lost data, disruption of existing digital ecosystems, relearning interfaces, and lost social or professional networks. Such dependence discourages user migration and reinforces incumbent advantage. The more a user has invested in a platform—be it personal data, digital subscriptions, or carefully curated preferences—the more the user is locked in, unintentionally insulating leading firms from competitive pressure. Both lock-in effects and market tipping are antitrust concerns because they result in substantial long-term consumer choice and welfare detriment as platforms attain market leadership. As platforms attain leadership positions in markets, they can start to use their market power in ways that are prejudicial to users—price increases, decreased service quality, or innovation stagnation. These companies can also use their position to practice exclusionary behavior, like self-preferencing or limiting interoperability, which can keep even potentially better competitors from getting a foothold. That in turn deepens dominance and undermines the

[30] *Tipping* (Concurrences) https://www.concurrences.com/en/dictionary/tipping.
[31] Özlem Bedre-Defolie and Rainer Nitsche, 'When Do Markets Tip? An Overview and Some Insights for Policy' (2020) 11(10) *Journal of European Competition Law & Practice* 610 https://doi.org/10.1093/jeclap/lpaa084.

contestability of digital markets.[32]

Entry barriers to new entrants are also increased by data-enabled learning, where leading platforms enhance their services with the aid of enormous and proprietary datasets. This forms a reinforcing spiral: more people use the platform, the more data it will have, which will make services better and thereby attract still more people. Additionally, when consumers single-home (i.e., use one platform exclusively), it will become even more difficult for substitute services to reach the tipping point, hence further reinforcing the tipping effect.

However, there are some mitigating circumstances. Multi-homing—when consumers use more than one platform at the same time—can maintain some competition. Similarly, user heterogeneity and market segmentation can permit niche operators to exist by serving differentiated consumer tastes. But these circumstances seldom halt the systemic dominance once tipping and lock-in effects have consolidated a platform.

In summary, market tipping and lock-in dynamics are structural characteristics of digital markets that call for close antitrust attention. Regulators should keep these events under watchful eyes to avoid market monopolization, maintain contestability, and protect long-term consumer interests. To overcome such issues, it might be necessary to combine ex-ante regulatory measures with persistent antitrust enforcement in order to guarantee that digital markets remain open, innovative, and sensitive to consumer demands.

3.4 Quality and Innovation Harm: Downgrading of User Experience and Reduced Competition

One of the more subtle but highly significant effects of decreased competition in online markets is the deterioration in service quality and innovation. As online platforms concentrate market shares, the need to constantly innovate user experience (UX) decreases. Without competitive pressure, dominant companies might de-emphasize the very things that initially made them successful—user-friendly design, hassle-free functionality, and prompt service—in the pursuit of short-term profitability and rent-seeking.

[32] Anna Rakel Rosshagen, *Preventing Tipping in Digital Markets: A Study on Article 102 TFEU in Relation to Market Tipping, with Insights from US Antitrust* (Stockholm University, 2024) https://www.konkurrensverket.se/globalassets/dokument/kunskap-och-forskning/uppsatstavling/uppsatser/uppsats-2024-anna-rakel-rosshagen.pdf.

The frustration users feel with poor quality is manifested across a series of platform experiences. From perplexing navigation patterns on Apple Music to distracting autoplay functionality on YouTube, Byzantine privacy settings on Facebook, and creaky, slow-to-load sites such as CNN, consumers are increasingly experiencing friction along the way[33]. This deterioration in quality results in decreased user engagement, and studies have demonstrated that even slight reductions in digital experience contribute to significant declines in time spent and retention. The rising "patience gap" among consumers—characterized by low patience with technical failures or poor design—also increases attrition and frustration.

These quality harms are not benign; instead, they tend to be the product of deliberate business decisions. Too often, monetization strategies like aggressive advertising, dark patterns, and paywalls take precedence over user satisfaction.[34] The prevalence of CAPTCHAs, overly aggressive cookie banners, or cumbersome opt-out processes highlights how platforms can design digital spaces in firm-serving ways that harm the user.

From the antitrust viewpoint, these declines in user experience are a type of consumer harm that more traditional price-based models frequently miss.[35] In online markets, where more services are theoretically free, the decrease in quality and control by users becomes an important signal of decreased competition. Notably, it also stifles innovation. When market leaders are sheltered from competition, they may have little incentive to invest in actual technological or design innovation. Instead, they might indulge in "innovation-stalling" or even "planned obsolescence" and hence retard the overall dynamism of the digital economy.[36]

Such UX deterioration also has a deterring impact on entry. Prospective competitors need not only to replicate the incumbent's minimum offering but exceed it while surmounting huge network effects and data handicaps. For smaller players or new entrants, competing with established platforms that deteriorate UX while sustaining user lock-in becomes virtually impossible.

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[33] Eddie Laan, 'The Degradation of UX' (Medium, 25 October 2019) https://uxdesign.cc/the-degradation-of-ux-eb8ff1c6856d.
[34] Mads Soegaard, 'Bad UX Exposed: A Comprehensive Guide to Avoiding Pitfalls' (Interaction Design Foundation) https://www.interaction-design.org/literature/article/bad-ux-examples.
[35] Shane Schick, 'Consumers Spend 42% Less Time on Digital Experiences That Degrade by 2%' (360 Magazine, 14 May 2025) https://360magazine.com/2025/05/14/digital-experience-quality-research/.
[36] Luis Berumen Castro, 'The Downward Spiral Affecting Our Digital Products' (Medium, 24 January 2024) https://uxdesign.cc/the-downward-spiral-affecting-our-digital-products-cfb15f008571.

Surveys and market research confirm this systemic issue. A large portion of online consumers complain about the quality of their experiences, mentioning usability, transparency, and responsiveness as major concerns. Most feel that platforms are not responsive to their requirements, a matter directly related to market dominance and a lack of effective competitive alternatives.

Summing up, downgrading the user experience and innovation stagnation are essential antitrust issues in the digital economy. These damages, even if fine-grained and dispersed, erode consumer welfare over time and portend a larger imperative of competitive renewal. Regulators must thus broaden the antitrust analysis to encompass non-price aspects of consumer harm, especially in industries where quality, innovation, and user empowerment are the competitive currencies of choice.

4. Case Analysis: Applying Consumer Welfare in Indian Digital Markets

4.1 Google Android and Play Store: How Harm Was Measured

The Competition Commission of India (CCI) conducted a comprehensive probe against Google on charges of anti-competitive behavior in licensable smart TV operating system markets and Android-based application stores in India.[37] The investigation centered on whether Google abused its dominant market position with contractual terms and practices that limited competition and caused harm to consumer well-being.

The main charges revolved around Google's requirement of compulsory pre-installation of its application suite, such as the Play Store and YouTube, as a condition for OEMs to use the Android TV operating system. Also, Google was alleged to be imposing restrictive licensing agreements, including the Television App Distribution Agreement (TADA) and Android Compatibility Commitments (ACC), effectively preventing OEMs from producing or utilizing alternative Android versions, commonly referred to as "forks." These agreements not only included bundling Google's core applications but also default placement requirements that restricted the freedom of OEMs in product development and software inclusion.

In considering the harm, the CCI used a consumer welfare-based approach that analyzed the

[37] Press Information Bureau, 'CCI Approves Google's Settlement Proposal in Android TV Case' (21 April 2025) https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=2123289 accessed 29 May 2025.

impact of Google's behavior on market structure, innovation, and consumer choice. It first defined the relevant product markets as the market for licensable smart TV device operating systems in India—controlled by Android TV OS—and the market for app stores for Android Smart TV OS—controlled by the Google Play Store. In both the markets, Google was determined to be in a position of dominance, mainly because of its dominant market share, control over essential technological components, and non-availability of equivalent substitutes.[38]

Secondly, the CCI analyzed the restrictive nature of Google's license agreements and held that these practices have led to creating artificial barriers to entry. The compulsory bundling of software and rigid compatibility limits precluded OEMs from trying out or releasing differentiated editions of the Android platform. This restricted OEMs from innovating, keeping costs low, or providing diversified functionalities, hence eliminating competition both at the hardware and software levels. By stifling the development of competing operating systems and app stores, Google's actions consolidated its position while sacrificing the dynamism of the market.

The effect on competition and innovation was substantial. The tying of Google services—like YouTube to the Play Store—and imposing uniformity by virtue of ACC requirements diminished the incentives for OEMs and solo developers to invest in other platforms. It not only decreased technological variety but also restricted the emergence of start-ups and small players aiming to join the digital economy. Consequently, consumers were offered a limited number of very similar smart TV products, without too much innovation and diverse features. The impact on consumer welfare was quantified not in direct pricing terms, but in wider terms such as decreased choice, lower quality, and delayed innovation. The CCI observed that consumers were indirectly prejudiced, as OEMs were forced to pay more and were discouraged from introducing innovative or competitively priced alternatives. This impetus led to a possible rise in end-user prices and a stagnation in product diversity. More significantly, the absence of competitive pressure lowered the pressure for ongoing improvement and technological progress.

[38] Aryan Rawat, 'Android Antitrust Case: Diving into Effect-Based Approach of CCI' *Centre for Business and Commercial Laws, NLIU Bhopal* (7 December 2023) https://cbcl.nliu.ac.in/competition-law/android-antitrust-case-diving-into-effect-based-approach-of-cci/ accessed 29 May 2025.

In light of these findings, Google offered a set of remedies designed to address the CCI's concerns. These included the unbundling of its application suite, thereby giving OEMs the freedom to choose which apps to pre-install[39]. A standalone license for the Play Store and Play Services was introduced, enhancing OEM autonomy. In addition, the need to comply with the ACC was eliminated for devices that did not have Google apps, thus facilitating development and commercialization of Android forks. Google also agreed to pay a monetary penalty and to report annually regarding compliance to facilitate regulatory monitoring.

The CCI's approach in this case illustrates a shift towards an effect-based analysis in digital competition law, where the measurement of harm includes not only pricing concerns but also the broader implications for innovation, market access, and consumer freedom. By assessing how Google's practices adversely impacted market competition and long-term consumer interests, the Commission reaffirmed the relevance of the consumer welfare standard in the digital age. This case is a valuable precedent in assessing the changing face of antitrust enforcement in India's digital economy and emphasizes the need for regulatory oversight in ensuring a level and competitive playing field.

4.2 WhatsApp Privacy Policy Case: Interplay Between Data Protection and Competition

In 2021, the popular messaging service in India, WhatsApp, rolled out a major upgrade of its privacy policy that required users to agree to share their personal information with Meta, the parent organisation, along with other Meta-owned services like Facebook and Instagram. This adjustment was made as an absolute condition—users had to agree to the new policy in its entirety in order to keep using the app, thus offering a typical "take-it-or-leave-it" situation. The absence of any opt-out provision became the focal point of regulatory scrutiny, particularly from the Competition Commission of India (CCI), which launched an investigation to assess whether this policy constituted an abuse of dominant position under Indian competition law.

The CCI's analysis was grounded in the recognition of WhatsApp's dominance in the Indian over-the-top (OTT) messaging market. With its large user base and virtual monopoly, the CCI held that the 2021 privacy policy constituted an imposition of unfair terms under Section 4 of the Competition Act, 2002. The insistence on agreeing to invasive data-sharing practices as a

[39] Press Information Bureau, 'CCI Approves Google's Settlement Proposal in Android TV Case' (21 April 2025) https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=2123289 accessed 29 May 2025.

condition for continued service was held to be coercive and exploitative. By withholding users from meaningful consent mechanisms, WhatsApp was in effect using market power to impose terms that users had little ability to reject. This practice was not just contractual unfairness but also anti-competition, as it undermined the freedom of choice and privacy of users.

Additionally, the CCI determined that excessive data exchange between WhatsApp and Meta erected very high entry barriers in nearby digital markets—particularly online advertisement. Meta's power to collect and use cross-platform user data was an unfair competitive practice that relegated competitors to a disadvantageous position, thus distorting competition in data-driven services like online display advertising. It was a form of leveraging dominance, where WhatsApp's entrenched dominance of the messaging market was leveraged to increase Meta's competitive advantage elsewhere. The behavior was both exclusionary and exploitative, as it hurt competitors while also limiting user choice at the same time.

Following these findings, the CCI levied a ₹213 crore fine on Meta and ordered WhatsApp to modify its policy design. More particularly, WhatsApp was asked to give users a choice for opting out of data sharing not related to its core messaging business. The Commission also ordered greater data practice transparency and barred WhatsApp user data from being used to display advertisements for five years. These remedies were crafted to restore consumer choice, reduce competitive distortions, and signal the need for more responsible data governance by dominant digital platforms.[40]

Significantly, the case highlighted the growing convergence between competition law and data protection frameworks in India. One of the key innovations in the CCI's reasoning was the recognition of data privacy as a form of non-price competition. Historically, competition law has been concerned with price, quantity, and quality. Yet in digital economies where services tend to be provided free of cost, data privacy presents a fundamental aspect of consumer welfare. The CCI recognized that indiscriminate data collection, lack of control by users, and unclear data policies could do harm to competition as well as to the interests of consumers even when services seem to be "free."[41]

[40] Argus & Partners, 'NCLAT: WhatsApp Secures Partial Stay on CCI's Order in Data Sharing Case' (21 February 2025) https://www.argus-p.com/updates/updates/nclat-whatsapp-secures-partial-stay-on-ccis-order-in-data-sharing-case/ accessed 29 May 2025.

[41] Kabir Singh, Khushbu Singh and Sarvika Singh, 'Analysing CCI's Order on WhatsApp's 2021 Privacy Policy – A New Era for Data Protection and Competition Law Enforcement in India' *Kluwer Competition Law Blog* (6

The case also raised issues of jurisdiction. WhatsApp contended that the issue lay solely within the domain of data protection law, specifically the Digital Personal Data Protection (DPDP) Act, 2023.[42] Nevertheless, India's Supreme Court upheld the authority of the CCI, confirming that competition agencies can make inquires into the anti-competitive implications of privacy policies, even where such policies also raise issues related to data protection standards. The Court recognized that while competition law and data protection law have distinct objectives and legal mandates, they can intersect in cases where the abuse of dominance involves data-driven practices. This ruling affirmed the CCI's role in digital market regulation and clarified the scope of its intervention in privacy-related issues.

Furthermore, the case underscored the necessity for coordinated regulatory frameworks. Since there is an overlap between data protection and competition issues, the implementation of the DPDP Rules in 2025 would be anticipated to supplement the remedies ordered by the CCI. In the meantime, the appeal proceedings have been adjourned to enable time for potential regulatory synchronization. The case necessitates greater coordination among sectoral regulators, like the Data Protection Board (once it is functional) and the CCI, to design holistic enforcement approaches for the digital economy.

The WhatsApp privacy policy case marks a turning point in Indian digital regulation. It sets an essential precedent in the sense of considering data privacy not simply as a consumer protection issue but as a valid competition law issue. It sends a powerful signal that leading digital platforms will be held responsible for exploitative and exclusionary behavior with user data. Above all, the case highlights the necessity of legal and institutional clarity in dealing with the intricate challenges of data-driven markets. As India's digital economy grows, the experience of this case will continue to influence future regulatory approaches and facilitate the balance between the aspirations for innovation, competition, and core rights.

4.3 Amazon/Flipkart Market Practices: Preferential Listings and Deep Discounting

The Competition Commission of India (CCI) has, over the past few years, conducted extensive investigations into the marketplace behavior of Amazon and Flipkart—two of India's most

January 2025) https://www.kluwercompetitionlawblog.com/2025/01/06/analysing-ccis-order-on-whatsapps-2021-privacy-policy/ accessed 29 May 2025.

[42] TT&A, 'Supreme Court Upholds CCI's Investigation of WhatsApp's Privacy Policy' (November 2022) https://tta.in/supreme-court-upholds-ccis-investigation-of-whatsapps-privacy-policy/ accessed 29 May 2025.

prominent e-commerce platforms. These investigations confirmed substantive competition law infringements relating to preferential listing, deep discounting practices, and exclusive launch terms. Collectively, these strategies substantially skewed the competitive forces of India's e-commerce market, leading to a tilted playing field that prejudiced independent sellers as well as traditional retail stores.

A core issue that the CCI detected was the discrimination exercised by both Amazon and Flipkart in favor of a small group of special sellers. Amazon had six special sellers, whereas Flipkart had up to thirty-three[43]. These sellers were offered disproportionate benefits, such as favored positioning in search results, priority marketing exposure, discounted logistics and warehousing capabilities, and exposure to platform algorithms that would promote their visibility. These benefits provided the favored sellers with a significant competitive advantage, making it difficult for regular sellers to achieve more than a database listing with little commercial viability. This treatment not only excluded non-preferred sellers but also limited their potential to communicate with consumers effectively, thus compromising the values of fair competition and non-discriminatory treatment.

Along with preferential listings, the CCI also discovered that these preferred sellers were facilitated to carry out deep discounting practices, frequently selling their products below cost. This tactic was called predatory pricing by the Competition Act, 2002. It was facilitated by the capital support of foreign investment directed into the platforms. Subsidization through this made Amazon and Flipkart able to discount prices in most product categories, driving small online retailers and conventional brick-and-mortar stores out of business.[44] The deep discounting model distorted price signals in the market and prevented businesses that did not have similar amounts of financial resources from surviving, even to compete on level ground. The anti-competitive issues were also heightened by exclusive launch deals between these platforms and leading technology brands such as Samsung, Xiaomi, Motorola, Realme, and OnePlus. These deals ensured that new smartphone models and other electronics initially came to market exclusively via Amazon or Flipkart. Exclusive launches of this sort kept other

[43] Aditya Kalra, 'What are India's Antitrust Findings Against Amazon, Flipkart' *Reuters* (16 September 2024) https://www.reuters.com/world/india/what-are-indias-antitrust-findings-against-amazon-flipkart-2024-09-16/ accessed 29 May 2025.
[44] CPI, 'India's Antitrust Report: How Did Amazon and Flipkart Violate Competition Laws' *Competition Policy International (PYMNTS)* (15 September 2024) https://www.pymnts.com/cpi-posts/indias-antitrust-report-how-did-amazon-and-flipkart-violate-competition-laws/ accessed 29 May 2025.

sellers—especially offline and smaller ones—out of new stock during the period of peak demand. This did not only limit consumer choice but artificially concentrated market power in the platforms' hands and that of their favored vendors, hence increasing entry barriers and diminishing market diversity.

The CCI held that the aggregate impact of these practices was a significant foreclosure of competition in various sectors, with particularly harmful consequences for electronics and consumer goods markets. The strong ecosystem established by Amazon and Flipkart led to a de facto duopoly in which competitive results were determined not on the basis of merit or innovation but due to platform bias and money power. The Commission referred to the result as having a "catastrophic impact" on competition's composition, especially among small firms and new entrants who cannot gain visibility and sales.

From a legal perspective, these conclusions fell within the context of the Competition Act, 2002 (amended in 2023)[45], which prohibited the abuse of dominant position and required equal access and non-discriminatory treatment to all market players. Even if Amazon and Flipkart were not market leaders in the traditional sense, the CCI noted their remarkable market power, particularly over pricing structures, product visibility, and seller success. The probe also leveraged provisions of the Consumer Protection (E-Commerce) Rules, 2020, that specifically ban misleading advertisements, exclusive dealings, and unfair trade practices. These regulations underpin the need for transparency and fairness on the part of e-commerce players to ensure that consumers and sellers are not deceived by untransparent algorithms and collusive deals.

The Amazon and Flipkart cases therefore highlight the necessity for strong antitrust enforcement in India's fast-growing digital economy. They expose how platform power, if unregarded, can be utilized to engineer competitive results beneficial to the business interests of a select few at the cost of market diversity and economic equity. The action by CCI communicates a powerful message that market access, price freedom, and visibility are not luxuries reserved for the privileged few, but have to be given to all stakeholders in the digital economy on an equal footing. In the future, further regulatory intervention, increased transparency of algorithms, and structural corrections could be necessary to bring about true

[45] Competition Act, 2002 (Section 4)

competition and ensure that India's e-commerce ecosystem develops in a sustainable and inclusive way.

4.4 Global Comparisons: Facebook in Germany, Apple App Store in the EU

In the developing scenario of digital antitrust enforcement, developments in other jurisdictions outside India—notably Germany and the European Union—are instructive comparatively. Two cases stand out: the German Federal Cartel Office (FCO) investigation against Facebook (now Meta) and the regulatory action by the European Commission against Apple's App Store.[46] Both instances demonstrate a trend among international regulators to respond to non-price harms in online markets, including loss of privacy, user choice restriction, and suppression of innovation.[47]

The German case against Facebook was focused on the supposed misuse by the company of its dominant market position in social networking services. The German FCO ordered an investigation into Facebook's data harvesting activities, where it gathered user data from its own platforms—WhatsApp and Instagram—along with third-party websites, without explicit and voluntary consent. The root issue was not financial damage in the classical antitrust context, but the violation of user autonomy and the right to informational self-determination.
After investigating, the FCO determined that Facebook's behavior was an exploitative abuse of dominance of German competition law. The authority noted that Facebook used its dominant position to enforce unfair contract terms, essentially compelling users to consent to pervasive data practices as a prerequisite for accessing the site. This coercion compromised users' capacity for informed decision-making regarding their personal information, thus providing the basis for an injury in the form of consumer harm derived from loss of privacy instead of price manipulation. As a redressal measure, the FCO instructed Facebook to stop the consolidation of data across various sources unless the users provided clear consent. In compliance, Meta made considerable changes in its data treatment policies, allowing users to control how data from different Meta-owned and third-party services was connected to their Facebook accounts. The case was finally closed once Meta dropped its appeal, and the FCO considered the

[46] Louven Legal, 'What is the German Antitrust Case Against Facebook About?' (12 May 2019) https://www.louven.legal/en/blog-post/what-is-the-german-antitrust-case-against-facebook-about accessed 29 May 2025.
[47] Hausfeld, 'Data Exploiting as an Abuse of Dominance: The German Facebook Decision' (n.d.) https://www.hausfeld.com/what-we-think/competition-bulletin/data-exploiting-as-an-abuse-of-dominance-the-german-facebook-decision accessed 29 May 2025.

measures put in place as being effective enough.[48]

The Facebook case was trailblazing in its appreciation that data protection and competition law are becoming increasingly intertwined in digital economies. It shifted antitrust thought, recognizing that consumer harm can also occur from diminished privacy and control, even where services are provided without a monetary price. The case was landmark in reshaping abuse of dominance in terms of informational asymmetry and contractual unfairness in data markets.

A parallel and similar development was also seen in the European Union, where Apple's App Store policies faced criticism under the newly implemented Digital Markets Act (DMA). Apple was identified by the European Commission as a digital "gatekeeper" due to its dominance over the iOS ecosystem and was criticized for its restrictive App Store policies that hampered competition and innovation. Central issues were Apple's insistence on developers using its own in-app payment system, as well as preventing "steering"—that is, preventing developers from guiding users to other, usually lower-cost, purchasing options outside the App Store.

The Commission concluded that Apple's actions restricted consumer choice and pushed excessive costs on app developers, many of whom were compelled to pay up to 30% commissions. These provisions not only disadvantaged competing payment providers and other channels for app distribution, but also resulted in consumers paying inflated prices and decreased diversity in the apps presented. To counteract this, the DMA compelled Apple to permit third-party app stores and payment systems on its platform, eliminate anti-steering provisions, and provide equal and non-discriminatory access to core functionalities to all app developers. The EU's strategy is especially interesting for its forward-looking and structural orientation. Instead of simply penalizing historic behavior, the DMA aims to actively remake digital market architecture through openness, contestability, and user empowerment.

Collectively, the Facebook in Germany and Apple in the EU cases illustrate a wider regulatory trend toward recognition and response to non-traditional types of consumer injury in the digital

[48] Natasha Lomas, 'Antitrust Challenge to Facebook's "Superprofiling" Finally Wraps in Germany — With Meta Agreeing to Data Limits' *TechCrunch* (10 October 2024) https://techcrunch.com/2024/10/10/antitrust-challenge-to-facebooks-superprofiling-finally-wraps-in-germany-with-meta-agreeing-to-data-limits/ accessed 29 May 2025.

economy. These are exploitative data practices, lower innovation, and systemic support for platform monopolies. Both jurisdictions employed competition law not just as a remedial tool, but as an overarching model for protecting digital rights and promoting market plurality. The results show an increasing convergence of views that in platform-mediated markets, privacy, autonomy, and choice are just as important to consumer well-being as price and output.

On balance, the German and EU experiences provide valuable lessons for regulators around the world, including India. By aiming at powerful digital platforms with both behavioural remedies and structural rules, these jurisdictions have established significant precedents. They show that valid competition policy in the digital era must adapt to embrace the peculiar nature of data-powered platforms, thus preventing market power from operating at the expense of core consumer protections.

5. Critiques and Limitations of the Traditional Consumer Welfare Approach

5.1 Overemphasis on Price Effects

Indian competition policy traditionally adopted the consumer welfare approach, traditionally derived from mainstream economics, where price and output levels are given prime importance as signs of consumer injury.[49] While this might be a suitable method for traditional markets, the same cannot be said for digital markets. In digital environments, where services are typically priced at zero money, such a limited perspective runs the risk of missing significant, non-price-related consumer injury.[50]

Major Criticisms of the Price-Focused Approach

1. Single-Lens Perspective on Price and Output

The dominant model of enforcement reduces consumer welfare to lower prices and greater production, which simplifies the complex nature of harm in online markets. In markets such as Google, Facebook, or Amazon, most services are indirectly monetized—mainly by user data

[49] Ritika, *Beyond Bargains: The Hidden Dangers of India's Competition Act and the Need for Smarter Antitrust Enforcement*, NLIU Law Review Blog, February 7, 2025, available at https://nliulawreview.nliu.ac.in/blog/beyond-bargains-the-hidden-dangers-of-indias-competition-act-and-the-need-for-smarter-antitrust-enforcement/, last accessed on May 29, 2025.

[50] Malik, Payal, *Competition Issues in Digital Markets – Policy Brief 5*, Indian Council for Research on International Economic Relations, available at https://icrier.org/pdf/IPCIDE-Policy_Brief_5.pdf, last accessed on May 29, 2025.

or advertising income—making price a bad metric for competition evaluation. Consumer welfare here transcends cost to cover quality of service, data protection, choice, and innovation.[51]

2. Delayed Competitive Harm Recognition

Indian enforcement authorities, including the CCI, have traditionally taken their time waiting for clear indicators of market dominance—commonly quantified by using market share—before acting on the issue. Yet, by the time recognition takes place, market tipping, consumer lock-in, and path dependency have already established the dominant status, which renders remedial action less successful.[52]

For instance, initial discounting actions by Amazon, Flipkart, Swiggy, and Zomato were ignored since these companies hadn't established a commanding share yet. Nevertheless, these moves had already started distorting competition in the markets and pushing out smaller competitors—paving the way for duopolies in the future.

3. Failure to Notice Non-Price Harms

Digital platforms often resort to exclusionary practices that hurt consumers without increasing prices. Examples are:

- Self-preferencing of in-house products
- Anti-steering provisions that limit user choice
- Bundling services to drive out competition
- Exploitative data collection without consent
- Algorithmic discrimination and manipulation of content visibility

These activities have an impact on consumer choice, market diversity, and innovation but sometimes remain out of reach of regulatory oversight because they lack quantifiable price effects.

4. Difficulty in Measuring Non-Price Harms

The CCI has not always created methods for quantification of harm in terms of degradation of

[51] Jain, Sumit and Singh, Vikrant, *Competition in Digital Markets: An Indian Perspective*, SSRN, June 12, 2024, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4863926, last accessed on May 29, 2025.
[52] Gouri, Geeta, *The Competition Commission of India and Digital Markets*, Competition Policy International, April 11, 2025, available at https://www.pymnts.com/cpi-posts/the-competition-commission-of-india-and-digital-markets/, last accessed on May 29, 2025.

quality, stifling of innovation, or loss of data rights. This is the gap in quantification that hinders the regulator from crafting proportionate and effective remedies and ignores systemic harms. In the digital economy, these intangible aspects of harm are more costly in the long run than any short-run effect on prices.[53]

5. Towards a Holistic and Proactive Framework

There is a growing consensus in the academic literature, policy white papers, and parliamentary reports that India needs to shift from a price-focused, ex-post enforcement framework to an integrated, ex-ante regulatory system.[54] Such a system would:

- Acknowledge the multi-dimensionality of consumer damage
- Emphasize contestability, openness, and data responsibility
- Fold innovation, privacy, and market openness into welfare evaluations
- Redirect attention from backward-looking penalties to forward-looking supervision

This transformation aligns with changing global norms, such as the European Union's Digital Markets Act (DMA), which prioritizes structural equity and ex-ante commitments for gatekeepers.

Conclusion

The persistent use of price effects as the main measure of consumer welfare very much weakens the efficacy of Indian competition enforcement in the age of the digital economy. With platform economies increasingly exerting their influence, injury typically stems from non-price aspects like data exploitation, limited choice, and innovation stifling. To properly safeguard consumer interests and ensure competitive markets, India must adopt a more expansive, forward-looking strategy that records the complete range of harms caused by digital gatekeepers.

5.2 Failure to Capture Long-Term Market Dynamics and Data Control

India's competition law, albeit primarily drafted under the Competition Act, 2002, remains largely directed towards short-term market measures like price and quantity. Yet, the

[53] Yadav, Abha and Donadi, Tarun, *Competition Law and Significance of Data in Determination of Market Position*, Indian Competition Law Review, Vol. 6, Issue 1, p. 43, available at http://iclr.in/wp-content/uploads/2021/01/3.-Competition-Law-and-Significance-of-Data-in-Determination-of-Market-Position.pdf, last accessed on May 29, 2025.

[54] Ministry of Corporate Affairs, *Report of the Committee on Digital Competition Law*, Government of India, March 2024, available at https://prsindia.org/files/parliamentry-announcement/2024-04-15/CDCL-Report-20240312.pdf, last accessed on May 29, 2025.

distinctive nature of digital markets—specifically, the function of data aggregation, network effects, and tipping of markets—requires more dynamic and anticipatory regulatory responses. The current framework falters to mitigate the structural and long-term damages resulting from data-led dominance, thereby risking the consolidation of monopolies undermining consumer welfare in the long term.[55]

Pivotal Limitations in Confronting Long-Term Market Dynamics

The most urgent limitation is the inability of the Indian competition regime to identify data as a source of market power. Online platforms like Amazon, Flipkart, and Meta leverage enormous volumes of user data to attain and maintain competitive advantages. The data not only improves in-house efficiencies but also erects insurmountable hurdles to entry for new players. For example, Meta's control of data on WhatsApp, Facebook, and Instagram allows it to own the digital advertising market with relative ease, largely excluding other platforms from competition. This notwithstanding, the Section 19(4) factors remain to focus on conventional signs such as market share and financial prowess, without proper regard to data control and ecosystem lock-in as fundamental determinants of dominance.

Furthermore, the short-run emphasis on price and output impacts misses how digital markets have a tendency to quickly tip towards a monopolistic dominant firm. The MCX v. NSE case illustrates how zero-pricing strategies—first optimal in terms of output—eventually resulted in monopolization to the detriment of long-run competition.[56] The same trend can be seen in the online retail sector, where Amazon and Flipkart's practice of deep discounting, coupled with privileged treatment of a few sellers, have led to a duopolistic pattern. This has pushed out smaller entities and steadily decreased consumer choice, even as the illusion of initial price advantages was created.

The third fundamental problem is the insufficiency of tools to confront data-driven exclusionary behavior. Existing competition law tools are not well placed to address subtle but very efficient practices such as self-preferencing and algorithmic discrimination.[57] For

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[55] Srivastava, Ankit and Kumar, Divyansha, *Digital Economy, Data, and Dominance: An Indian Perspective*, CCI Journal on Competition Law and Policy, Vol. 2, December 2021, pp. 97–120, doi:10.54425/ccijoclp.v2.43.

[56] Kathuria, Vikas, *Assessing India's Ex-Ante Framework for Competition in Digital Markets*, ProMarket, May 29, 2024, available at https://www.promarket.org/2024/05/29/assessing-indias-ex-ante-framework-for-competition-in-digital-markets/, last accessed on May 29, 2025.

[57] Bhandari, Konark, *Assessing the Need for a New Draft Digital Competition Bill in the Indian Context*, Carnegie

instance, Google's favoring of its own apps on Android devices or Amazon's promotion of in-house labels are techniques that limit market entry for competitors without any obvious price increase or production cut. Though the Digital Personal Data Protection Act, 2023, touches upon some data privacy issues, its enforcement can paradoxically further consolidate incumbents. Consent mechanisms, for example, might be designed such that they favor already consolidated platforms, thus cementing their grip over users' data and restraining competitive pressure.

Case Examples Hailing Systemic Gaps

The Amazon-Flipkart e-commerce duopoly is a classic example of these systemic gaps. Their capacity to gather and process consumer data allows them to maximise everything from stock to marketing approaches, benefiting their own brands and favored sellers. Consequently, solo sellers are pushed aside, and consumer choice is functionally limited. Likewise, Meta's access to cross-platform data allows it to become dominant in user activity and ad revenues, displacing smaller platforms that cannot have such immense pools of data.

Recommended Reforms

Solving these problems will need a multi-pronged approach. First, Section 19(4) of the Competition Act must be revised to include data control, network effects, and platform lock-in as fundamental indicators of market power.[58] Second, India needs to contemplate introducing ex-ante regulations, as proposed in the Digital Competition Act, to avoid anti-competitive conduct before they irreparably distort the market. Lastly, the CCI's enforcement timelines in digital cases must be expedited to prevent harm from becoming entrenched due to delays in investigation and intervention.

Conclusion

If India proceeds to assess digital competition on the basis of archaic indicators, it threatens to perpetuate a system that is unable to address structural harms to emerging digital markets. By understanding the strategic significance of data, embracing a future-oriented regulatory approach, and proactively countering anti-competitive behavior, it can ensure innovation and

India, February 19, 2025, available at https://carnegieendowment.org/research/2025/02/assessing-the-need-for-a-new-draft-digital-competition-bill-in-the-indian-context?lang=en, last accessed on May 21, 2025.

[58] Tewari, Anadi, *A Critical Evaluation of India's Proposed Digital Competition Act*, CCI Journal on Competition Law and Policy, Vol. 5, No. 1, June 2024, pp. 79–104, doi:10.54425/ccijoclp.v5.197.

safeguard consumer interests in the digital economy.

5.3 Lack of Tools to Quantify Quality, Privacy, and Innovation Harms

Introduction

The other essential failing in enforcing India's competition law is its lack of ability to do an effective identification and quantification of non-price harms, like quality dilution, invasion of privacy, and stifling innovation. The consumer welfare standard that serves as the pillar of antitrust reasoning in India is largely focused on price. This creates a blind spot for digital markets, where many of the core services are provided free of money, but consumers end up bearing significant non-price harms.

Major Limitations in Non-Price Harm Measurement

The first is the excessive focus on price and market share, which marginalizes important considerations such as privacy protection, service quality, and product innovation[59]. Digital services such as Google Search, WhatsApp, or Facebook are nominally "free," but they derive substantial value from consumers by harvesting data, filtering content, and restricting user control over personal data. Such harms are difficult to quantify using conventional price-based analysis and hence tend to be neglected by enforcement agencies.

Second, India does not yet have methods for measuring non-price harms systematically. The Competition Commission of India has, on various occasions, detected anti-competitive conduct like bundling, tying, and self-preferencing. Yet, without a well-structured framework to assess the resulting harm to innovation or privacy, enforcement orders tend to be vague and ineffective. For instance, although the CCI accepts that Google's behavior restricts competitors' access to the Android ecosystem, it has a hard time proving how this creates quantifiable harm to consumers in ways other than the price.

A third of the essential issues relates to the regulatory capacity limitation for the CCI. The Commission has constrained financial and technical resources and relies on external assistance in the form of secondments or consultants for in-house expertise in data analytics, behavioral

[59] Radu, Cezara; Dumitra, Edi Cristian; Cotescu, Razvan-George, *Behavioral Economics in the Era of Digital Subscriptions: Choice or Manipulation*, Journal of Academic Opinion, available at https://academicopinion.org/index.php/pub/article/view/68, last accessed on May 20, 2025.

economics, and privacy engineering.[60] This severely hampers its capacity to examine complex algorithmic behavior, evaluate digital marketplace conduct, or create workable solutions to remedy harms to innovation and data protection.

Need for Ex-Ante Regulatory Tools

Delineating these issues, recent policy discussions and committee reports have suggested implementing an ex-ante regulatory approach to digital markets. The suggested Digital Competition Act brings about the idea of Systemically Significant Digital Enterprises (SSDEs), which will be more intensely and proactively regulated.[61] Through this model, the CCI might employ both quantitative and qualitative measures, e.g., scale of data, user coverage, and dependency on platforms, to detect and avert potential risks to innovation, quality, and privacy—before permanent harm is caused.

Conclusion

The failure to correct for non-price harms is a deep fault in the existing antitrust infrastructure. As online platforms expand in scale and reach, privacy-degrading, innovation-suppressing, and decreased service quality harms only deepen. Closing this gap demands not merely altering legal standards and enforcement strategies but also investing in institutional capacity to better capture and respond to these emergent forms of consumer harm.

5.4 Difficulty in Assessing Harms in Multi-Sided Markets

Evaluating consumer harm in multi-sided online marketplaces poses special challenges to Indian competition law due to the sophisticated interdependencies, network effects, and data-driven business models typical of such platforms.[62]

Major Challenges:

Interrelated Complexity

Multi-sided platforms (MSPs) such as Ola, Uber, Google, and BookMyShow bring together

[60] Ganesh, Anush, *The Indian Draft Digital Competition Bill and Report: A Critical Perspective*, Indian Law Review, available at https://www.tandfonline.com/doi/full/10.1080/24730580.2025.2506958?src=, last accessed on May 17, 2025.
[61] Rao, Archana, *India's Digital Competition Bill Advances with Industry Insights*, India Briefing, March 17, 2025, available at https://www.india-briefing.com/news/indias-digital-competition-bill-advances-with-industry-insights-36536.html/, last accessed on May 17, 2025.
[62] *Non-Transaction Platforms*, IndiaCorpLaw, October 26, 2022, available at https://indiacorplaw.in/2022/10/delineating-relevant-market-for-multisided-platforms-transaction-vs-non-transaction-platforms.html, last accessed on May 20, 2025.

separate user groups—e.g., consumers and providers of services—whose behaviors and interests are mutually interdependent. Value to one group is often contingent on participation by another, generating cross-side network effects. Thus, it becomes challenging to define and measure harm on one side independently without regard for its effect on the other.

Market Definition Difficulties

The Competition Commission of India (CCI) has failed to draw relevant markets for MSPs consistently. In some instances, such as BookMyShow, CCI acknowledged multisidedness and accounted for feedback effects across sides, but in others, including Matrimony.com v. Google and the Google App Store cases, it examined each side in isolation, neglecting integrated dynamics. This inconsistency makes it more difficult to evaluate dominance and anti-competitive impacts.[63]

Subsidization and Pricing Structures:

MSPs tend to cross-subsidize one group of users (e.g., providing free or low-cost services to consumers) by overcharging another group (e.g., higher rates to advertisers or service providers). Classical price- or output-focused tools are likely to miss harm where one party seems to reap apparent benefits (e.g., lower prices), while the other party pays the price, or where harm is expressed as lower quality, choice, or innovation.[64]

Network Effects and Market Tipping:

Intensive network effects are capable of quickly establishing entrenched leaders, tipping markets, and increasing entry barriers for competitors. Long-term harm assessment tools need to be able to factor these dynamics, not static one-way analysis.

Absence of Established Methodologies

There is no uniform approach in India for evaluating harms in MSPs. Internationally, authorities have begun to adapt, with the EU's Digital Markets Act and revised market definition guidelines, but India is still developing its frameworks. The CCI's current practice

[63] Golovanova, Svetlana and Ribeiro, Eduardo Pontual, *Multi-Sided Platform Analysis and Competition Law Enforcement Practice in BRICS Countries*, CRESSE, available at https://www.cresse.info/wp-content/uploads/2021/10/2021_ps9_pa1_Golovanova.pdf,

[64] Golovanova, Svetlana and Ribeiro, Eduardo Pontual, *Multi-Sided Platform Analysis and Competition Law Enforcement Practice in BRICS Countries*, CRESSE, available at https://www.cresse.info/wp-content/uploads/2021/10/2021_ps9_pa1_Golovanova.pdf,

is described as inconsistent and analytically incomplete.

Illustrative Example:

In the BookMyShow case, the CCI did recognize that consumer-side dominance enabled the platform to impose sole agreements on multiplexes while acknowledging feedback effects. But in other instances, for example, in Matrimony.com v. Google, it did not consider the multisided nature and thus caused incomplete harm analysis.

Conclusion:

Harms analysis in multi-sided markets in India is afflicted with:

- Inconsistent market definition practices.
- Insufficient acknowledgment of cross-side effects.
- Legacy tools not up to task for dynamic, data-driven digital platforms.

To manage these issues, India must create and apply analytical tools and legal principles responsive to the nature of multi-sided digital markets, based on worldwide best practices and concentrating on integrated, holistic harm assessment.

6. Rethinking the Standard: Towards a Holistic Consumer Harm Framework

6.1 Incorporating Privacy, Autonomy, and Fairness

Indian competition law stands at the crossroads of change, as it is starting to move towards accepting the failure of the classical consumer welfare standard based on price and output factors alone. With the age of the digital platforms' ostensibly "free" services, consumer injury no longer manifests through traditional economic indicators. Rather, the degradation of privacy, undermining of user sovereignty, and systemic unequality in online markets demand a reconceptualization of consumer harm through a more integrative optic. It coincides with trends on the global level and reacts to the specificity of digital ecosystems in India.

The need for this paradigm shift stems largely from the dynamics of digital market existence. Large platforms like Google, Amazon, Meta, and Flipkart depend on widespread data collection and processing, commonly across several services and devices, to amass their market dominance. Such acts include self-preferencing of related services, bundling of products or attributes, and anti-steering clauses that bar users from finding competitor alternatives. In such situations, consumer harm does not take the form of higher prices but is instead experienced through reduced privacy, diminished meaningful choice, and obfuscated business practices that

discourage competition and innovation. These harms are insidious but ubiquitous and can tip markets into the hands of dominant incumbents ahead of regulators acting.[65]

Internationally, competition authorities like the European Union and Germany have already started to incorporate privacy and fairness concerns into competition analysis. Google's action on self-preferencing by the European Commission and Meta's cross-platform data integration under scrutiny by the German Federal Cartel Office are only a few instances of regulatory acknowledgment of non-price harms. India's draft competition law amendments, including the draft Digital Competition Act, aim to follow suit by creating a legal framework that places privacy, user control, and equity at the heart of competitive evaluation.

A reimagined consumer harm framework will have to start with recognition of privacy as a competition issue. The exploitation of personal data, especially when matched up between services, provides platforms with unparalleled behavioral insights that can be used to support targeted advertising, manipulation of user preferences, and exclusionary behavior. [66]The improper cross-use of data between core and third-party services not only creates privacy concerns but also strengthens dominance in a variety of market segments. To resolve this, it is suggested that Systemically Significant Digital Enterprises (SSDEs) should be expressly prohibited from processing or merging personal data across services for anti-competitive ends, subject to narrowly defined exceptions on informed user consent and proportionality.[67]

No less significant is the strengthening of user autonomy and control. Practices that restrict user agency—like coerced opt-in for data sharing, the lack of interoperability and data portability, or the use of anti-steering rules—undermine consumer welfare even when prices are low or zero. These practices lock users into digital ecosystems, increase switching costs, and discourage competition. Committee reports have emphasized the necessity for ex-ante monitoring tools to pre-empt undesired conduct and keep markets contestable, with users continuing to exercise real control over their digital transactions.

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[65] *A Year into EU's Digital Markets Act: Lessons for India*, Indian Business Law Journal, available at https://law.asia/digital-competition-regulation/,

[66] Goswami, Manu, *Data Privacy vs. Market Power: Navigating the Intersection of Personal Information Protection and Competition Law in India's Digital Economy*, ICLR, Vol. 9, Issue 2, available at http://iclr.in/wp-content/uploads/2024/12/ICLR-Vol-9-Issue-2-Article-4.pdf,

[67] Tiwari, Sakshi and Trivedi, Monarch, *Towards Fairer Digital Markets: Understanding Digital Markets Act and Ex-Ante Regulations in India*, DNLU Student Law Journal, October 10, 2024, available at https://dnluslj.in/towards-fairer-digital-markets-understanding-digital-markets-act-and-ex-ante-regulations-in-india/, last accessed on May 29, 2025.

The third pillar in a comprehensive harm framework is the concept of fairness and non-discrimination. Algorithms of dominant platforms need to be subjected to neutrality standards whereby every user—be they end customers or business partners—enjoys equal access and treatment. This encompasses requirements for transparent search and recommendation processes, non-discriminatory access to platform infrastructure, and prohibitions on self-preferencing practices. Remedies under the suggested legal framework are the imposition of ex-ante obligations on digital gatekeepers, the establishment of proportional monetary fines in case of non-compliance, and case-by-case regulatory approaches contingent upon the scale and nature of platform business.

For this integrated framework to become operational, institutional change is also imperative. The Digital Competition Act proposed by the government has a regulatory framework designed for large digital businesses, integrating privacy, autonomy, and fairness as fundamental enforceable commitments. The Act acknowledges that digital ecosystems are complex, and it advises augmenting the Digital Markets and Data Unit at the Competition Commission of India (CCI) with professionals from technology, data science, and behavioral economics. This will strengthen the CCI's capacity to investigate algorithmic conduct, interpret non-price effects, and craft effective remedies. Moreover, enforcement mechanisms under the new regime aim to align with global best practices, allowing for penalties up to 10% of global turnover for violations—an approach intended to ensure deterrence and compliance.

In conclusion, redefining consumer harm in the digital age necessitates a profound departure from the conventional focus on price and output. Indian competition law needs to adapt to the reality that privacy erosion, loss of autonomy, and systemic discrimination are no less damaging than outright price gouging. The new regulatory architecture captures this adaptation through a combination of legislative updating, institutional strengthening, and ex-ante regulation. Through adopting this integral way of thinking, India can guarantee that its online markets continue to be vibrant, open, and respectful of user rights while encouraging a competitive environment that promotes innovation and sustainable growth.

6.2 Developing a Standard for 'Non-Price' Harms

The increasing sophistication of India's digital markets has required a reconsideration of the traditional competition law model, especially the over-reliance on price and output measures as indicators of harm to consumers. Consumer harm in these markets tends to take non-price

forms—ranging from privacy loss and user control to lower innovation and unfair trading practices. Consequently, the establishment of an exhaustive standard for detecting and remedying such non-price harms is crucial to an effective competition policy regime.

A cornerstone of this new framework is the identification of various non-price harms eroding consumer welfare. Foremost among these is data exploitation, in which leading platforms use non-public user information for profiling, targeted advertising, and cross-service interconnection—posing serious questions of user privacy and choice.[68] Another important issue is self-preferencing, where platforms prefer their own services and products in the ecosystem and thus undermine platform neutrality and equal market access. Anti-steering rules and lock-in features also block user mobility and diminish competitive pressure by deterring multi-homing and switching. Moreover, algorithmic manipulation to lower quality, exclusive deals, and building closed digital gardens—or "walled gardens"—lower service quality and restrain innovation. Unfair contract terms like parity clauses or differential conditions also have the effect of entrenching dominance and limiting entry or expansion by smaller players, to the consumer's disadvantage.[69]

This rethinking of consumer damage is supported by Indian jurisprudential and policy evolutions. As an aside, a number of recent orders by the Competition Commission of India (CCI), as well as the suggestions of the 53rd Parliamentary Standing Committee Report, point to the necessity for a conceptual framework that moves beyond price-focused analysis. These recent advancements reflect the importance of measuring exploitative and exclusionary conduct prejudicial to consumers and closing down competition, even in the absence of rising prices. Furthermore, focus is increasingly being given to the concentration of practices—deep discounting, preferential rankings, and exclusive partnerships—cumulatively skewing market dynamics.

In turn, an increasing consensus exists regarding the need for ex-ante regulation to actively counteract these harms. The Draft Digital Competition Bill, 2024, contemplates the imposition

[68] Malik, Saksham and Agarwal, Bhoomika, *Digital Markets and Gaps in the Indian Competition Regime*, The Dialogue, May 2023, available at https://thedialogue.co/wp-content/uploads/2023/05/FINAL-Digital-Markets-and-Gaps-in-the-Indian-Competition-Regime_forprints.pdf,
[69] Narla, Shreyas and Rajagopalan, Shruti, *India's Proposed Digital Competition Framework: The License Raj by Another Name*, Mercatus Center, 2024, available at https://the1991project.com/sites/default/files/2024-07/4967_Narla_Rajagopalan_Competition_Framework_IPE_v1_compressed.pdf,l

of certain obligations on Systemically Significant Digital Enterprises (SSDEs) with respect to platform neutrality, data protection, and fair access. The Draft provisions seek to ban anti-steering clauses, self-preferencing, and abusive data practices, while giving regulators authority to enforce remedies and levy robust penalties for non-compliance.

The efficacy of this approach hinges on institutional capacity-building. The CCI's Digital Markets and Data Unit (DMDU) is expected to play a pivotal role in operationalizing these reforms by developing in-house expertise in data analytics, behavioural economics, and platform regulation. This technical capacity is essential for detecting subtle non-price harms and ensuring evidence-based enforcement.

For example, a number of practices can be mapped, with little difficulty, to particular non-price harms: self-preferencing diminishes consumer choice and skews the competitive landscape; data exploitation undermines user privacy; anti-steering provisions limit consumer control and contestability; exclusive tie-ups close off markets and suppress innovation; and algorithmic manipulation of ranking erodes transparency and service quality.

In total, a forward-looking standard of consumer harm needs to take these non-price dimensions into account in enforcement decisions and regulatory design. This reconceptualization is an important step towards making India's competition regime more suitable for the changing digital economy, so that regulatory interventions are targeted at the complex ways in which consumer welfare can be harmed.

6.3 Role of Behavioural Economics and User Consent Models

With India poised to adopt more forward-looking, ex-ante regulation of digital markets, the function of behavioural economics and consent architecture has grown increasingly salient. These bodies of knowledge yield vital knowledge about how users interact with digital platforms and discover that customary legal presumptions—rational user choice and informed consent—frequently fail to apply in practice. This new appreciation is redefining the boundaries of digital competition policy, especially in the context of leading digital intermediaries.

Behavioural economics emphasizes that online users are not optimal rational agents but are shaped by cognitive frames, default options, and the structure of digital interfaces. Uncommon

behavioural tendencies—such as inertia, status quo bias, and framing effect—render users vulnerable to manipulation, especially through choice architecture. For example, permission to share personal data is frequently granted by means of visually prominent "accept" buttons or by making refusal inconvenient or time-consuming. Such subtle design elements can profoundly skew user autonomy and compromise the legitimacy of consent.[70]

The consequences for competition policy are deep. Established platforms can leverage behavioural bias to push consumers into disclosing information or agreeing to detrimental terms, reinforcing their market power without explicitly breaching old-style competition rules. In such situations, technical reliance on consumer consent is not enough to secure consumer protection. As behavioural evidence uncovers, how consent is elicited—more than whether it exists—is what makes users actually aware and in charge of their decisions.

This understanding has fueled regulatory innovation in India and beyond. Policy papers like the Draft Digital Competition Bill, 2024, and recent position papers by regulatory bodies recognize that requesting consent alone is insufficient. Users often go through consent fatigue or are coerced through design, making the exercise of autonomy mere illusion. Additionally, an over-reliance on consent mechanisms could end up being detrimental to small and medium-sized enterprises (MSMEs) that are based on data-driven advertising, as strict consent requirements might lower the effectiveness of such business models.[71]

In return, policymakers promote a principle-based and context-sensitive regime. Rather than requiring standardized consent procedures, the envisaged regime foresees self-executing obligations for SSDEs, which are specific to the type of service and characteristics of the market. The CCI is expected to formulate sectoral codes of conduct with spelled-out differentiated obligations depending on behavioural and structural evaluation of digital markets.

Although the European Union's Digital Markets Act (DMA) can be taken as a useful reference point, Indian regulators have urged its wholesale importation to be avoided. They note that

[70] Radu, Cezara; Dumitra, Edi Cristian; Cotescu, Razvan-George, *Behavioral Economics in the Era of Digital Subscriptions: Choice or Manipulation*, Journal of Academic Opinion, available at https://academicopinion.org/index.php/pub/article/view/68,
[71] Ganesh, Anush, *The Indian Draft Digital Competition Bill and Report: A Critical Perspective*, Indian Law Review, available at https://www.tandfonline.com/doi/full/10.1080/24730580.2025.2506958?src=, .

regulatory frameworks must be context-specific, accounting for local market realities such as the Indian users' behavioural trends, the mobile-first usage pattern that characterizes access in India, and the economic landscape of Indian MSMEs. The aim is to balance the need to avoid exploitative design practices with the need to leave room for innovation and user convenience. In order to achieve this, a behaviourally-informed approach to regulation will have to incorporate a number of key elements: first, it will have to make certain that consent is informed, non-manipulative, and significant; second, that it moves beyond consent to involve positive obligations of transparency, non-discrimination, and user empowerment; and third, that it is adaptive, allowing the regulator to set obligations according to platform size, market dominance, and actual user interaction.

Lastly, incorporating behavioural economics into competition policy and reframing consent models is essential for guaranteeing authentic user autonomy in India's digital markets. This is necessary to ensure consumer welfare is not only maintained in theory but also in practice, by focusing on the behavioural facts of user choice and preventing exploitative design by dominant platforms.

6.4 Enhancing the CCI's Investigative Tools and Guidelines

The fast pace of India's digital economies has introduced new regulatory issues that conventional competition frameworks are not well placed to solve. Accordingly, the Competition Commission of India (CCI) has started to significantly enhance its investigative toolkit and regulatory infrastructure to effectively detect, analyze, and prevent anti-competitive activities in data-driven, dynamic digital markets. Recent initiatives involve adaptable cost-assessment frameworks, suggested ex-ante actions, behavior-specific conduct guidelines, and institutional capacity-building strategies—all with the aim of enhancing agility, fairness, and technological advancement in enforcement.

6.4.1 Sector-Agnostic Cost Assessment Framework

In May 2025, the CCI brought out the Competition Commission of India (Determination of Cost of Production) Regulations, 2025, a key transition from inflexible, sector-specific costs to a more adaptable, sector-agnostic framework. This new approach is notably applicable for assessing claims of predatory pricing and deep discounting, particularly in digital markets such as e-commerce and quick-commerce, where conventional cost models tend to be inadequate. The rules enable the Commission to employ a variety of cost indicators—such as average

variable cost, average total cost, and long-run average incremental cost—based on the nature of the business model and market setting. This also provides a more detailed insight into price-setting strategies and competitive forces. Further, the rules include procedural protections by enabling firms being investigated to appeal for costing with the assistance of independent professionals. This not only increases fairness in adjudication but also ensures that sophisticated financial analyses are put through rigorous examination.[72]

6.4.2 Ex-Ante Digital Regulation for SSDEs

Given the shortcoming of ex-post enforcement in digital markets where dominance becomes entrenched fast, the Committee on Digital Competition Law has put forward a fresh framework of legislation in the form of the Digital Competition Act. This Act rests on an ex-ante framework that gives powers to the CCI to act pre-emptively against seemingly anti-competitive behaviour by Systemically Significant Digital Enterprises (SSDEs). The classification of SSDEs would be determined on the basis of quantitative measures like turnover, user base, and market capitalization, as well as qualitative measures like data volume, technological infrastructure, and ecosystem impact. The motive behind this framework is to step in before markets suffer irreversible tipping effects that fixate monopolistic dominance. By moving the regulatory approach from remedial penalties to anticipatory oversight, the bill seeks to respond to the pace and scope of digital consolidation, which frequently makes post-facto solutions unworkable or beyond time.[73]

6.4.3 Draft Guidelines for Data and Platform Behavior

The CCI is also working on framing detailed guidelines to regulate the behavior of digital platforms, especially with respect to data utilization, as well as cross-market conduct. These rules should place stringent restrictions on the cross-use and combining of personal data across services without user explicit approval. They also aim at curbing self-preferencing, bundling, and anti-steering where dominant players use their market position in one to unfairly compete in another. In addition, the guidelines suggest increased examination of "killer acquisitions," in which larger companies purchase nascent competitors to eliminate future competition.

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[72] *India's Competition Authority Rolls Out 2025 Cost Regulations Norms*, India Briefing, May 9, 2025, available at https://www.india-briefing.com/news/indias-competition-commission-enacts-2025-cost-regulations-norms-37368.html/, .

[73] Ganesh, Anush; Yadav, Mohit; Pathak, Gaurav, *The Indian Draft Digital Competition Bill and Report – A Critical Perspective*, SSRN, February 24, 2025 (revised May 21, 2025), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5134882,

Significantly, the guidelines would mandate SSDEs to report to the CCI all material mergers and acquisitions in the digital economy, whether or not the transaction qualifies for traditional regulatory scrutiny under thresholds. This forward-looking framework ensures that potentially anti-competitive transactions are not ignored because of obsolete jurisdictional triggers.

6.4.4 Institutional Capacity Enhancement

To ensure the successful deployment of these cutting-edge regulatory instruments, the CCI is making significant institutional investments, specifically in its Digital Markets and Data Unit (DMDU). This involves hiring technical specialists with specialized expertise in big data analysis, algorithmic conduct, and platform economics. Such experts are necessary for the dynamic monitoring of intricate digital environments in real-time and for formulating evidence-driven interventions that are timely and technologically aware. The DMDU is also anticipated to use cutting-edge analytical tools to decode algorithmic practices and platform behavior that are beyond the reach of conventional legal and economic analysis. By enhancing its in-house capacity, the CCI is ensuring that it is well-placed to address the dynamic challenges of governing complex digital platforms.

6.4.5 Conclusion

The CCI reforms mirror a wider paradigm shift for competition law enforcement, away from static, reactive instruments towards dynamic, pro-active instruments fitted to digital markets. Through the implementation of a cost assessment regime that is adaptive, crafting ex-ante regulation for SSDEs, developing conduct guidelines fitted to data and platforms, and deepening institutional knowledge, the CCI is adopting an enforcement model that is future-proofed. These advances reflect the Commission's dedication to promoting good competition, avoiding data-driven market manipulation, and protecting consumer well-being in India's rapidly expanding digital economy.

7. Policy and Legal Reform Recommendations

While India's digital markets change with lightning speed, the shortcomings of the present legal framework under the Competition Act, 2002 have become more and more apparent. In order to tackle the distinct challenges posed by the digital economy and encourage healthy competition, a series of policy and legislation changes are required. This chapter summarizes major proposals to update the law and bring regulatory practice into conformity with

international standards and realities of the digital world.

7.1 Modifying the Competition Act to Enlarge the Consumer Welfare Standard

India's digital economy has revealed the shortcomings of the classic Competition Act, 2002, which essentially monitors consumer welfare by traditional means such as price, output, and market share. As digital platforms continue to shape consumer behavior, business operations, and access to the market, there is a deepening opinion that the legal framework needs to illustrate a more expansive and holistic interpretation of consumer welfare. This new comprehension needs to incorporate elements like data privacy, autonomy of users, fairness, incentives for innovation, and non-price harms in order to encompass the complexity of digital competition.

One of the most pressing reforms is a movement from an ex-post to an ex-ante model of regulation. With the present regime, the CCI acts only after the anti-competitive activity has taken place, which may prove ineffective in the digital economy where tipping occurs very quickly and damage is irreparable. The Digital Competition Act bill puts in place a forward-looking ex-ante approach which enables the CCI to actively regulate systemically relevant digital businesses (SSDEs), allowing for earlier detection and prevention of anti-competitive action.

In addition, it is imperative to widen the statutory definition of consumer harm. The law needs to formally acknowledge harms that are not purely about pricing—like degradation of data privacy, limits on consumer choice, diminution in innovation, and coercive contract terms. This alignment puts India in concurrence with global regimes, particularly the European Union's Digital Markets Act, that address such non-price effects as being at the heart of competition law enforcement.

The new legal framework should also take into consideration the concentration of data as well as the use of algorithms as key sources of market power. Powerful digital platforms often indulge in behaviors such as self-preferencing, bundling, cross-use of personal data, and exclusive tie-ups that interfere with competition and erode user choice. Prominent regulatory responses must cater to such algorithmic and data-driven practices with the right legal instruments that take into account their distinct nature as well as impacts.

To put such reforms into practice, institutional capacity has to be enhanced. A dedicated Digital Markets Unit within the CCI is essential. This unit should be manned by technical specialists who are familiar with digital business models, big data analytics, and algorithm design. The unit would facilitate sustained market monitoring, undertake expert investigations, and offer well-informed advice to inform policy and enforcement under the new regime.

Furthermore, the law must enhance fairness and contestability in online markets. Deals like platform parity clauses, exclusive tie-ups, and multi-homing prohibitions by business users need to be reined in. The dominant platforms should not be allowed to bar users from providing their goods and services on rival platforms on different terms or prices. These restrictions reduce choice and hinder entry into the market, ultimately harming consumers.

Lastly, the penalty and enforcement provisions of the Act need to be modified. For efficacious deterrence, particularly in the context of international digital companies, the Act has to permit the assessment of penalties on global turnover where local revenue figures are not available or adequate. This would align India's penalty regime with that of the world.

To sum up, revising the Competition Act to extend the consumer welfare standard is necessary for facilitating fair, innovation-based, and inclusive competition in India's digital economy. The suggested changes—such as the introduction of ex-ante tools of regulation, a broader concept of harm, and greater institutional capacity—will empower the CCI to actively respond to market failure, safeguard consumers, and promote competitive neutrality in the digital economy.

7.2 Guidelines for Digital Market Assessment by CCI

The Competition Commission of India (CCI) is increasingly tailoring its digital market analysis style to the unique dynamics of platform business models, e-commerce networks, and instant-commerce operations. The new guidelines are marked by increased dynamism, technicality, and forward-looking approach, allowing the CCI to better address the rapidly evolving nature of digital competition.

One of the pillars of the revised guidelines is the sector-neutral, case-by-case cost assessment approach. By accepting the 2025 Cost Regulations, the CCI departed from rigid sector-specific targets and embraced a more flexible model. This enables regulators to assess every case on a

case-by-case basis, taking into consideration the characteristics and competitive patterns specific to the digital sector in question. It is particularly relevant in economies where companies tend to have advertising-driven, cross-subsidized, or platform-based business models that do not fit within conventional cost structures.

The updated framework also integrates contemporary cost measurement tools. Instead of using average total cost or standard variable costs, the CCI now draws on a variety of cost indicators—such as average variable cost, long-run average incremental cost, and even platform-specific indicators that are customized for platform economics. This helps to better assess pricing strategies in situations where traditional cost standards might be deceptively presented.

Besides price analysis, the guidelines also stress that non-price and dynamic harms need to be evaluated. The CCI recognizes that exclusionary behavior, algorithmic self-preferencing, exploitative data usage, and foreclosure of competition through sole tie-ups or dynamic pricing models have the potential to highly skew digital markets. Such harms, though not necessarily priced, have permanent impacts on market structure, innovation, and consumer well-being.

Identification and early regulation of SSDEs are a key part of the guidelines. The Committee on Digital Competition Law has advised that the CCI apply a mix of quantitative and qualitative parameters—such as turnover, user base, market capitalization, volume of data processed, and technological dependencies—to classify firms as SSDEs. This method allows for early intervention before such firms become entrenched as gatekeepers with decisive superiority.
Another key aspect is merger and acquisition oversight. Noting the danger of so-called "killer acquisitions" whereby large established players buy up nascent competitors to stop future threats, the guidelines recommend that SSDEs report any significant digital sector mergers and acquisitions, even if these are below traditional asset or turnover levels. This prevents potentially damaging deals from falling through regulatory nets because of outmoded measurement metrics.

Finally, the proposals suggest detailed regulations on platform behavior and usage of data. These include prohibitions on cross-use and combination of personal data with no express user permission, bundling and self-preferencing caps, and protection against discriminatory conditions for third-party business users. These initiatives are intended to maintain consumer

control and ensure a fair level playing field for lesser firms in the virtual world.

In conclusion, the CCI's evolving digital market assessment guidelines signify a major shift towards adaptive, evidence-based regulation in India's competition landscape. By integrating sector-agnostic methodologies, focusing on dynamic and non-price harms, and introducing anticipatory tools for regulating SSDEs, the CCI is equipping itself to uphold fair competition in an increasingly data-driven and algorithmically governed digital economy.

7.3 Coordination with the Data Protection Authority (DPDP Act, 2023)

The passage of the Digital Personal Data Protection (DPDP) Act, 2023 is a major milestone in India's regulatory landscape, setting up the Data Protection Board of India (DPBI) as a specialized body responsible for regulating digital privacy. Since the DPDP Act is set to enter into force once government notification occurs, strong coordination between the DPBI and the Competition Commission of India (CCI) is essential for dealing with the growing overlap between data protection and competition law, particularly in digital markets where personal data features prominently as a determinant of market power and consumer targeting.

Jurisdictional certainty is the first such area of concern. Both the DPBI and CCI will regulate overlapping zones of influence, specifically where data-driven practices—like exploitative data sharing, self-preferencing, or algorithmic discrimination—result in anti-competitive effects. The DPDP Act is mainly regulating the gathering, processing, and use of personal data, whereas the CCI examines if such practices perpetuate dominance, exclude competitors, or adversely affect consumer welfare by non-price factors. Having well-defined boundaries and cooperative practices will prove crucial in the settlement of any arising disputes as well as in averting regulatory inconsistencies.

Case management and information exchange are another priority. The two agencies should establish official procedures for mutual notification and consultation whenever a case has both data protection and competition implications. For instance, situations like the WhatsApp privacy policy modification—where consumer consent, portability of data, and exclusionary design intersect—are subject to technical analysis of data by the DPBI as well as market impact analysis by the CCI. The DPBI can provide detailed insights about conformity with norms of consent and data minimization that may be utilized by the CCI while determining abuse of dominance or foreclosure of the market.

Third, remedies and enforcement approaches need to be harmonized so that businesses are not put in a regulatory conundrum. For example, the CCI would try to prohibit self-preferencing on the basis of proprietary data, whereas the DPBI might require user data portability or minimization. Inconsistent obligations can be avoided by synchronizing remedial measures, possibly through joint guidelines or synchronized enforcement plans. This will also see to it that digital businesses are subjected to uniform and consistent expectations while taking care that competition and privacy issues are sufficiently addressed.

Policy harmonization and capacity development constitute the fourth pillar for this coordination approach. Considering that the DPDP Act takes cue from international best practices like the EU's General Data Protection Regulation (GDPR), policy goal harmonization between the DPBI and CCI will enhance predictability and alignment. Joint advice, inter-agency staff training, and pooled digital expertise will improve the institutional capacity to deal with cases involving intricate, data-driven behavior. In addition, collective policymaking can be used to pre-empt new threats in sectors such as AI, targeted advertising, and platform interoperability.

From an implementation perspective, the extraterritorial application and harsh penalties of the DPDP Act require clear, predictable enforcement procedures, particularly for international digital companies doing business in India. The structural independence of the DPBI has been doubted as a result of its limited tenure and possible executive dominance. This requires that the CCI and DPBI exercise open, rules-based coordination that keeps regulatory uncertainty to the barest minimum and preserves institutional reputation.

In sum, as India is going through the intersection of competition and privacy regulation, a systematic and cooperative relationship between the CCI and DPBI will be essential. Well-defined jurisdictional boundaries, harmonized enforcement, collective technical capability, and institutional confidence will ensure that digital markets are competitive, consumer-driven, and lawfully consistent in the novel regime of data protection.

7.4 Building Capacity for Tech-Driven Market Analysis

The Competition Commission of India (CCI) accepts that competition regulation in the digital era demands much more than what has traditionally been required by legal and economic means. As digital platforms are transforming the marketplace using artificial intelligence,

algorithmic pricing, and sophisticated data ecosystems, the CCI has to develop strong internal capacity to grasp and deal with these changing challenges.

To target this, the CCI set up the Digital Markets and Data Unit (DMDU) in 2024. The DMDU is a specialized unit that is charged with studying digital business models, platform algorithms, and data practices to identify and investigate anti-competitive conduct specific to digital markets. The DMDU is the central point of investigation for behavior like algorithmic collusion, self-preferencing, and data exclusivity—conduct that tends to elude traditional antitrust investigation.

But this effort needs major improvement. The CCI is actively seeking government authorization to increase the DMDU's people and technical capacity. This involves recruiting AI experts, data scientists, digital economists, and lawyers—individuals with interdisciplinary expertise to apply to new challenges in platform regulation. The CCI recognizes that technologies such as machine learning, behavioral targeting, and real-time analytics call for ongoing adjustment of enforcement techniques and analytical frameworks.

Among the strategic axioms that drive this reform is the principle of evidence-based and proportionate enforcement. According to Chairperson Ravneet Kaur, regulation must be based on robust economic and empirical evidence so as not to discourage innovation. For this purpose, there is a need to build advanced data analytics tools, market simulation tools, and algorithmic audit tools so that the CCI can intervene exactly and justifiably where competitive harm has been shown.

Stakeholder outreach and industry-specific market research are also part of capacity building. The CCI has already initiated studying artificial intelligence and other tech industries in order to gain better insight into emerging competition patterns. Such studies guide the development of effective guidelines and enforcement focus areas and ensure the CCI remains sensitive to technological change.

In addition to establishing a new Enforcement Committee, the CCI should undertake several important actions further to build capacity. First, it needs to invest in technical talent by hiring data scientists, AI experts, and digital economists. Second, the creation of high-level analytical tools—like real-time big data tracking and frameworks for algorithmic transparency—will be

vital. Third, institutional cooperation with universities, think tanks, and international competition authorities can provide for knowledge sharing and mutual learning. Fourth, ongoing training programs would be initiated to make CCI employees familiar with new digital technologies and the regulatory approach. Finally, increased transparency through publication of digital market information and enforcement trends would raise public confidence and provide market participants with clarity.

In sum, building internal capacity for digital market analysis is not an organizational upgrade—it's a strategic imperative. Through DMDU strengthening, enhanced technological capabilities, and institutionalized evidence-based enforcement, the CCI can be nimble, well-informed, and able to respond to the special challenges of India's digital economy. Such a transformation will make India's competition regime competitive in the era of platform capitalism and digitalization.

8. Conclusion

8.1 Summary of Key Findings

This dissertation has shown that the price-oriented consumer welfare standard based on output and price analysis falls short to resolve the intricate, multifaceted harms occurring in India's changing digital markets. By analyzing enforcement patterns, case studies, global comparators, and new legislative trends, it is clear that the price-oriented approach underestimates serious non-price harms like loss of privacy, diminished autonomy, stagnation in innovation, and foreclosure of market. Inquiry into Google's Android bundling, WhatsApp's privacy policy, and Amazon/Flipkart's preferred listing policies points to the fact that dominance in digital economies tends to be exercised not in the form of explicit price manipulation, but through data control, exclusionary design, and platform entrenchment. These observations justify increasing calls for an integrated redefinition of consumer harm in Indian competition law.

In addition, the rise of data as currency, the spread of algorithmic discrimination, and the leveraging of behavioural biases in consent models illustrate that user harm in digital platforms is more often than not subtle, structural, and cumulative. A strictly ex-post, static enforcement mechanism cannot effectively address these dynamic and changing challenges. The criticism of the current regime highlights the imperative of integrating privacy, fairness, and innovation within consumer welfare's paradigm. The suggested move towards ex-ante regulation,

capacity-building, and inter-regulatory coordination mirrors this developing correspondence among policymakers and scholars.

8.2 The Road Ahead: Evolving Consumer Protection in a Digital India

India is at a critical moment in its quest to create a competition law regime appropriate to the digital era. The path forward entails re-calibrating regulatory mindsets, strengthening institutional machineries, and embracing a proactive approach to market regulation. The Draft Digital Competition Act, and associated amendments to the Competition Act, 2002, constitute a critical step towards empowering the Competition Commission of India (CCI) to tackle sophisticated, data-driven anti-competitive strategies with resilience and accuracy.

First, the way forward needs to include the official embrace of an expanded consumer welfare standard that encompasses non-price harms like quality decline, loss of privacy, exclusionary design, and innovation stifling. These aspects are indispensable in platform economies where the financial price tag frequently equals zero and value exchange is resultant in data and attention.

Second, India's digital economy evolution requires the institutionalisation of ex-ante regulatory capabilities. This involves early identification of Systemically Significant Digital Enterprises (SSDEs), the imposition of conduct duties on digital gatekeepers, and ongoing monitoring of algorithmic and data practices with the ability to distort competition or restrict user agency.

Third, the way forward for consumer protection is convergence—specifically between competition law and data protection regimes under the DPDP Act, 2023. As boundaries between consumer rights, digital privacy, and market competition continue to erode, India has to develop systematic coordination between the CCI and the Data Protection Board to establish a coherent and integrated regulatory ecosystem.

Last but not least, continued investment in regulatory capability—particularly technical competence in data science, algorithmic analysis, and behavioural economics—will be crucial to the translation of the new regulatory standards into effective enforcement. The Digital Markets and Data Unit (DMDU) will have to transform into a highly analytical centre of expertise capable of facilitating proportionate, evidence-based, and anticipatory choices.

8.3 Final Reflections on Regulatory Philosophy and Innovation Balance

The governance of online markets is not merely a legal or economic issue—it is also a philosophical one. At its core is a profound question: how can the balance be achieved between innovation and control, between market dynamism and fair consumer protection?

This study contends that a judicious balance can be struck not in terms of deregulation or suffocating supervision, but by means of smart, principle-driven, and responsive regulation. Digital markets depend on dynamism in innovation, but unbridled dominance and manipulation of behaviour can snuff out that same energy. The goal, then, is not to encumber digital business, but to make sure that innovation is competitive, inclusive, and attuned to consumer well-being in its widest possible meaning.

The Indian regulatory approach will need to shift away from reactive enforcement based on traditional price metrics to a proactive, user-focused model that identifies data, attention, and trust as the principal currencies of the digital economy. This requires reimagining competition law not as a fixed document, but as a living tool of market fairness.

In sum, safeguarding consumer interests in digital markets requires constant dedication to legal advancement, institutional responsiveness, and cross-disciplinary cooperation. As India persists in shaping its digital destiny, an integrated, future-focused competition law ecosystem will be essential in ensuring an open, innovative, and fair market—not merely for the users of today, but for the generations yet to come.