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Redefining Dominance in the Digital Era: Recalibrating Section 4 of the Competition Act, 2002 for Platform Markets

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ABSTRACT :

The Competition Act, 2002 prohibits the abuse of a dominant position, but its conception of dominance was fashioned for an economy of tangible goods, measurable prices and visible market shares. Digital platforms, which supply services at zero price to one side of the market, draw strength from network effects and user data, and bind users inside integrated ecosystems, strain every assumption on which that conception rests. This paper examines how the Competition Commission of India (CCI) has stretched the statutory text of sections 4 and 19(4) to reach such enterprises, and compares the Indian response with the ex-ante regulatory model of the European Union and the structural litigation pursued in the United States. A dedicated section then maps the most recent legislative, regulatory and judicial developments, including the Competition (Amendment) Act, 2023, the deal value threshold, the settlement and penalty regimes of 2024, the appellate treatment of the Google and WhatsApp orders, the stalled Digital Competition Bill, and the contrasting outcomes of the leading American and European cases. The paper argues that the foundational principles of Indian competition law remain sound, but that the tools used to identify market power must be recalibrated around dynamic factors, sophisticated market definition, effects-based analysis and carefully designed ex-ante guidance, and it closes with concrete suggestions for legislative, regulatory, institutional and procedural reform. It concludes that the hypothesis that traditional metrics of dominance are insufficient for digital platforms is borne out by the evidence.

Keywords: dominance; abuse of dominance; digital markets; network effects; Competition Act, 2002; Competition Commission of India; ex-ante regulation; Big Tech

I. INTRODUCTION

The Competition Commission of India (CCI), established under the Competition Act, 2002 (the Act), is charged with preventing practices that have an appreciable adverse effect on competition (AAEC), promoting and sustaining competition in markets, protecting the interests of consumers and ensuring freedom of trade.¹ For decades, the framework for assessing market power was relatively stable. Regulators looked at tangible metrics such as market share, the size of the enterprise and control over physical infrastructure. The meteoric rise of the digital economy has disrupted these paradigms at their foundation.

The core of the challenge lies in section 4 of the Act, which prohibits the abuse of a 'dominant position'.² A dominant position is defined as a position of strength enjoyed by an enterprise in the relevant market that enables it to operate independently of competitive forces, or to affect its competitors, consumers or the relevant market in its favour.³ The definition is robust, yet its application in the digital era has become profoundly complex. Digital firms such as Google, Meta, Amazon and Apple operate in multi-sided markets, often at a zero price to the consumer, and derive their power not only from sales revenue but from vast ecosystems, network effects and unparalleled access to user data.

This paper explores that complication. It analyses how the traditional understanding of 'dominance' is being stretched and reshaped to fit the contours of the digital marketplace, traces the evolution of the CCI's jurisprudence, and compares it with international approaches in order to identify an emerging global consensus, if any. Because the field has moved quickly since the Competition (Amendment) Act, 2023, a separate section is devoted to recent developments in legislation, regulation and case law.

The central argument is that while the foundational principles of competition law remain relevant, the tools for their application require significant recalibration if the gatekeepers of the new economy are to be policed effectively and innovation and consumer choice are not to be stifled by digital dominance. The paper proceeds in eight parts. Part II sets out the traditional concept of dominance. Part III explains why digital markets unsettle it. Part IV compares the Indian, European and American approaches. Part V surveys recent developments. Part VI proposes a recalibrated analytical framework, Part VII offers concrete suggestions for reform, and Part VIII concludes by revisiting the research questions and the hypothesis.

¹ Competition Act 2002, Preamble.

² Competition Act 2002, s 4.

³ Competition Act 2002, s 4, Explanation (a).

II. THE TRADITIONAL CONCEPT OF ‘DOMINANCE’ UNDER THE COMPETITION ACT, 2002

A. The Two-Step Inquiry

Section 4 of the Act is the cornerstone provision on the abuse of dominance. It adopts a two-step approach. First, it must be established that the enterprise holds a ‘dominant position’ in a defined ‘relevant market’. Second, it must be shown that the enterprise has ‘abused’ that position through one of the practices listed in section 4(2), which include imposing unfair or discriminatory conditions or prices, limiting production or technical development, denying market access, making contracts subject to supplementary obligations that have no connection with their subject matter, and using dominance in one relevant market to enter into or protect another.⁴

The sequence matters. The Supreme Court made clear in *Competition Commission of India v Steel Authority of India Ltd* that an assessment of dominance is incomplete, and indeed meaningless, without a prior delineation of the relevant market.⁵ The relevant market is itself built from two components, the relevant product market and the relevant geographic market, each assessed by reference to the interchangeability or substitutability of products and the homogeneity of conditions of competition.⁶ The entire edifice therefore depends on the ability to identify what is being sold, to whom, and at what price.

B. The Statutory Factors

The determination of dominance is not a matter of subjective assessment. It is guided by the factors enumerated in section 19(4) of the Act, which give the CCI a structured framework for analysing an enterprise’s market power.⁷ These are:

- the market share of the enterprise;
- the size and resources of the enterprise;
- the size and importance of the competitors;
- the economic power of the enterprise, including commercial advantages over competitors;
- the vertical integration of the enterprise or the sale or service network of such enterprises;
- the dependence of consumers on the enterprise;
- a monopoly or dominant position acquired by virtue of any statute;
- entry barriers, including regulatory barriers, financial risk and high capital cost of entry;
- countervailing buying power;
- market structure and the size of the market;
- social obligations and social costs; and
- any other factor which the Commission considers relevant for the inquiry.

The last item is easily overlooked, but it is the textual hinge on which much of the argument in this paper turns. The list is open-ended, and nothing in it confines the CCI to the industrial economy of 2002.

C. The Pre-Digital Emphasis on Market Share

In the pre-digital era, the CCI’s analysis gave considerable weight to market share. In *Belaire Owner’s Association v DLF Limited*, concerning the real estate market, the CCI relied heavily on DLF’s share of the market for high-end residential accommodation in Gurugram to establish dominance.⁸ The Supreme Court, in upholding the CCI’s decision, affirmed that market share is a key starting point, though not the sole determinant of dominance.⁹ That approach, focusing on shares and tangible assets, offered a reliable if simplistic gauge of market power in traditional industries, where products had visible prices, where capacity could be counted and where a competitor’s entry required a factory, a fleet or a plot of land. As the following Part shows, the characteristics of digital markets render such a simplistic analysis inadequate.

III. DOMINANCE IN THE DIGITAL ERA: A PARADIGM SHIFT

The architecture of digital markets differs fundamentally from that of brick-and-mortar industries, and the difference demands a conceptual shift in the way market power is understood and measured. Four characteristics are chiefly responsible for complicating the traditional assessment.

A. The Power of Network Effects

A network effect is the phenomenon whereby a product or service becomes more valuable as more people use it. In digital markets these effects are amplified. *Direct* network effects arise when a larger user base directly increases the value of the service to every user; a social media platform or a messaging application is more useful if one’s friends are on it. *Indirect* network effects are prevalent in multi-sided platforms, where the value to one group rises with the number of users on the other side; a ride-hailing application becomes more valuable to riders as more drivers join, and the reverse is equally true.¹⁰ These effects create feedback loops that can lead to market ‘tipping’, where a single platform rapidly becomes the dominant standard

⁴ Competition Act 2002, s 4(2)(a)–(e).

⁵ *Competition Commission of India v Steel Authority of India Ltd* (2010) 10 SCC 744.

⁶ Competition Act 2002, ss 2(r), 2(s), 2(t) and 19(5)–(7).

⁷ Competition Act 2002, s 19(4).

⁸ *Belaire Owner’s Association v DLF Limited* [2011] CCI Case No 19/2010.

⁹ *Competition Commission of India v DLF Ltd* (2018) Civil Appeal No 6352 of 2014.

¹⁰ On network effects and multi-sided platforms generally, see Nicolas Petit, ‘Defining Dominance in Digital Markets’ (2020) 13(1) *Journal of Competition Law & Economics* 121.

and new entrants find it exceedingly hard to compete. A rival may offer a technically superior product and still fail, because the value it offers is measured by the size of a network it does not yet have.

The consequence for section 19(4) is significant. Market share at a given moment says little about the durability of a platform's position if tipping has already occurred or is about to occur. The relevant question is not how large the platform is, but how contestable its position remains.

B. Data as a Formidable Barrier to Entry

Data is often called the 'new oil'. Large platforms collect vast quantities of granular user data, which they use to refine their algorithms, improve their services and target advertising. This creates a significant barrier to entry. A new search engine cannot compete with Google not merely because of Google's brand recognition, but because it lacks the historical query data that Google uses to perfect its results. The CCI has itself recognised, in its market study on the telecom sector, that data can become a non-replicable and essential asset whose control by a single entity may entrench dominance.¹¹

Data raises a further difficulty. It is simultaneously a source of quality improvements that benefit consumers and a source of entrenchment that harms competition. Any framework for dominance must therefore be capable of distinguishing efficiency-enhancing scale from exclusionary scale, which a share-based test cannot do.

C. Multi-Sided Markets and the Zero-Price Problem

Many digital platforms operate as multi-sided markets, serving two or more distinct but interdependent groups. Google, for example, provides free search to users while selling advertising space to businesses. This produces the 'zero-price problem'. How is market share to be calculated, or predatory pricing assessed, when the price on one side of the market is zero? A firm may subsidise the consumer-facing side to attract a very large user base, which in turn makes the platform indispensable to the other side, whether advertisers or app developers, and allows the firm to exert significant market power over them. The classical hypothetical monopolist test, which asks whether a small but significant non-transitory increase in price is profitable, loses its footing where there is no price to increase. A price-based analysis of dominance is, in such markets, deeply flawed.

D. Ecosystems and Lock-in

Leading technology companies have built vast, interconnected ecosystems. Apple, for example, integrates hardware (the iPhone and Mac), software (iOS) and services (the App Store and iCloud). The integration creates high switching costs and effectively locks consumers into the ecosystem. Once a user has invested in an ecosystem, moving to a competitor's product becomes difficult and costly. This control gives the firm power that transcends its share in any single product category, a factor that traditional analysis, with its product-by-product orientation, often overlooks. Control of an ecosystem also lets a firm leverage strength from one market into adjacent markets, which is precisely the conduct that section 4(2)(e) of the Act addresses.

IV. JUDICIAL AND REGULATORY APPROACHES: A COMPARATIVE ANALYSIS

Regulators worldwide are grappling with the application of age-old competition principles to new market realities. A comparison of India, the European Union and the United States reveals a mixture of adaptation, innovation and continuing debate.

A. The Indian Approach: Adapting to New Realities

The CCI has demonstrated growing sophistication in its analysis of digital markets and has moved away from rigid reliance on market share towards a more holistic assessment.

In *Matrimony.com Ltd v Google LLC*, the CCI considered Google's conduct in online general web search and online search advertising. It defined distinct relevant markets for those services in India, found Google dominant in each, and held that Google had abused its position by biasing search results in favour of its own vertical services.¹² The significance of the order lies in its recognition that a service offered free to users can nonetheless constitute a relevant market, because the users' attention is monetised on the other side of the platform.

The order of 20 October 2022 in *Umar Javed v Google LLC* is the most comprehensive articulation of the CCI's approach to the mobile ecosystem. The CCI defined the relevant markets as, among others, the market for licensable operating systems for smart mobile devices in India and the market for app stores for the Android operating system. It found Google dominant in both, noted its overwhelming share in the former, and recognised the Play Store as a critical gateway through which app developers reach users. It held that Google had abused that position by tying and by imposing pre-installation and anti-fragmentation conditions that protected its position in search and web browsing. The CCI imposed a penalty of ₹1,337.76 crore and issued cease-and-desist directions, which showed a willingness to intervene decisively.¹³

The CCI's treatment of data was tested in its investigation into WhatsApp's 2021 privacy policy update. The CCI's view was that the 'take-it-or-leave-it' character of the policy imposed unfair conditions on users and that the data collected could be used to strengthen the competitive position of the wider Meta group.¹⁴ This reflects an understanding that, in data-driven markets, the 'price' paid by the consumer is personal data, and that its exploitation can itself be anti-competitive.

B. The European Union: An Ex-Ante Regulatory Stance

The European Union has been the most assertive jurisdiction in regulating Big Tech. Beyond traditional enforcement, including the very large fines

¹¹ Competition Commission of India, 'Market Study on the Telecom Sector in India' (2021) 45.

¹² *Matrimony.com Limited v Google LLC* (CCI, Case Nos 07 and 30 of 2012, 31 January 2018).

¹³ *Umar Javed v Google LLC* [2022] CCI Case No 39 of 2018 (20 October 2022).

¹⁴ *In Re: Updated Terms of Service and Privacy Policy for WhatsApp Users* [2021] CCI Suo Moto Case No 01 of 2021.

imposed on Google in the *Shopping*, *Android* and *AdSense* matters, the Union has moved towards *ex-ante* regulation. The Digital Markets Act (DMA) designates certain large online platforms as ‘gatekeepers’ and imposes a list of pre-defined obligations and prohibitions on them.¹⁵

The DMA does not wait for an abuse of dominance to occur. It identifies platforms that have a significant impact on the internal market, serve as an important gateway for business users to reach end users, and enjoy an entrenched and durable position, and then regulates their behaviour in advance. Its obligations include data sharing, interoperability and a prohibition on self-preferencing. This acknowledges the limits of the case-by-case, *ex-post* model in fast-moving markets, where a decision taken years after the conduct began may arrive after the market has already tipped.

C. The United States: Renewed Enforcement Vigour

After years of a relatively hands-off approach, the United States has seen a resurgence in antitrust enforcement against large technology firms. The Department of Justice’s suit against Google alleged unlawful monopolisation of general search and search advertising.¹⁶ The Federal Trade Commission’s suit against Meta challenged its past acquisitions of Instagram and WhatsApp as a ‘buy-or-bury’ strategy to preserve its social media monopoly.¹⁷ Both cases signalled a willingness to challenge not only conduct but also the structure of the technology giants. The American emphasis is on using existing statutes, principally the Sherman Act, more robustly rather than creating a new regulatory regime of the kind embodied in the DMA.

D. Comparative Observations

Three observations follow. First, all three jurisdictions have abandoned the assumption that a zero price signifies the absence of market power. Second, each treats data, network effects and ecosystem control as relevant to entrenchment, though through different doctrinal doors: section 19(4) in India, the gatekeeper criteria in the European Union and the monopoly-power inquiry in the United States. Third, they diverge on institutional design, between a codified *ex-ante* regime and enforcement of general antitrust law. India sits between the two, with an *ex-post* statute that has been interpreted generously and an *ex-ante* proposal that remains unfinished.

V. RECENT DEVELOPMENTS

The period since 2023 has been the busiest in the history of Indian competition law. This Part surveys developments in legislation, regulation and case law in India, and then notes the principal movements abroad. The position is stated, so far as it can be verified, as at October 2026; several of the matters discussed remain *sub judice* and may change.

A. Legislative and Regulatory Developments in India

The Competition (Amendment) Act, 2023. The Act of 2023 is the most significant amendment since the statute was enacted.¹⁸ Several of its features bear directly on digital markets. It introduced a *deal value threshold* (DVT), under which a transaction must be notified to the CCI if its value exceeds ₹2,000 crore and the target has substantial business operations in India, even if neither party meets the traditional asset or turnover thresholds. The DVT, which came into operation on 10 September 2024, closes the gap through which ‘killer acquisitions’ of data-rich start-ups with little revenue could previously escape review.¹⁹ The Amendment also widened the definition of a ‘combination’ to include acquisitions of control, shortened the timelines for review of combinations, and introduced a settlement and commitment mechanism in sections 48A and 48B for abuse of dominance and vertical restraints cases.

Penalty on global turnover. The Amendment empowered the CCI to impose penalties by reference to the global turnover of an enterprise rather than only its relevant turnover in India. The CCI’s *Determination of Monetary Penalty Guidelines, 2024* set out the methodology for applying the power, including aggravating and mitigating factors.²⁰ For large technology groups, with substantial revenue outside India, this is among the most consequential provisions, and it has already been challenged in the courts, as discussed below.

Settlements and commitments. The Settlement and Commitment Regulations of 2024 gave practical effect to the new mechanism. The first major use in a digital case came in the proceedings concerning Google’s Android TV licensing practices, in which Google applied for settlement and the CCI accepted a monetary payment and a set of behavioural commitments, including undertakings relating to compliance reporting.²¹ The development is important for two reasons. It shows that the CCI now has a route to quicker remedies without a full adjudication, and it signals that digital cases can be resolved through commitments that reshape conduct. It also exposes a risk: if settlements are used too freely, the body of precedent that clarifies the meaning of dominance in digital markets will grow more slowly.

Market studies and artificial intelligence. In October 2025 the CCI published its market study on artificial intelligence, which identified risks including algorithmic collusion, self-preferencing and concentration in foundational inputs such as data and compute, and accompanied it with a non-binding guidance note on self-audit of AI systems.²² The study shows the CCI using its advocacy powers in the *ex-ante* spirit suggested later in this paper.

The Digital Competition Bill. The most closely watched legislative project is the Digital Competition Bill. A Parliamentary Standing Committee on

¹⁵ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector (Digital Markets Act).

¹⁶ *United States v Google LLC*, Case No 1:20-cv-03010 (DDC).

¹⁷ *Federal Trade Commission v Facebook, Inc.*, Civil Action No 1:20-cv-03590 (DDC 2020).

¹⁸ Competition (Amendment) Act 2023 (Act 9 of 2023).

¹⁹ Competition (Amendment) Act 2023, s 5, inserting a deal value threshold in the Competition Act 2002, s 5(d).

²⁰ Competition Commission of India (Determination of Monetary Penalty) Guidelines 2024.

²¹ Competition Commission of India (Settlement) Regulations 2024 and (Commitment) Regulations 2024; Case No 19 of 2020 (Google Android TV), settlement order.

²² Competition Commission of India, *Market Study on Artificial Intelligence and Competition in India* (October 2025).

Finance recommended a dedicated law for digital markets in December 2022, and in February 2023 the Ministry of Corporate Affairs constituted a Committee on Digital Competition Law. The Committee reported on 12 March 2024 with a draft Bill that would designate ‘systemically significant digital enterprises’ for specified core digital services, impose conduct obligations on them in advance, and permit penalties of up to ten per cent of global turnover, without replacing the Act.²³ The draft attracted strong objections from industry and from some trading partners, and in mid-2025 it was reported that the government was reassessing it and planning a market study before proceeding, with some issues possibly being handled through the Act’s commitment and settlement tools. The Ministry has since sought research on the criteria for identifying such enterprises. In August 2026 a report of the Standing Committee on Finance was reported to have favoured finalising and introducing the Bill while retaining an *ex-ante* framework with objective designation criteria, and the government has said that it will progress the law without committing to the 2024 draft in its present form. As of this writing the Bill has not been introduced in Parliament.

B. Judicial Developments in India

Google Android: *Umar Javeed v Google LLC*. Google appealed the CCI’s order of 20 October 2022 to the National Company Law Appellate Tribunal (NCLAT). By its judgment of 29 March 2023 the NCLAT upheld the finding of abuse and the penalty of ₹1,337.76 crore, but set aside four of the CCI’s directions, including those concerning access to Google’s Play Services application programming interfaces, restrictions on uninstalling pre-installed applications, and restrictions on side-loading.²⁴ Google has carried the matter to the Supreme Court, where the appeal is pending. The practical lesson of the NCLAT decision is that the appellate forum accepted the CCI’s reasoning on dominance and abuse, while pruning remedies that went beyond what the evidence supported. The finding of dominance, in other words, has held; the debate has shifted to the proportionality of the cure.

Google Play billing: *Alliance of Digital India Foundation v Google LLC*. In October 2022 the CCI found that Google had abused its dominance through its Play Store billing policy, which required developers of certain applications to use Google Play’s billing system, and imposed a penalty of ₹936.44 crore.²⁵ On appeal, the NCLAT upheld the finding of a contravention of section 4(2)(e), through the leveraging of dominance to promote Google’s own payments product, but overturned other findings and reduced the penalty to ₹216.69 crore, computed on revenue from Play Store-related activity rather than on the wider turnover on which the CCI had relied. The Supreme Court has agreed to hear appeals filed by Google, the CCI and the complainant. The point of broader significance is the NCLAT’s insistence that penalties track the revenues connected to the abuse, a principle which will inevitably be tested against the global-turnover power introduced in 2023.

WhatsApp and Meta. On 18 November 2024 the CCI concluded its inquiry into WhatsApp’s 2021 privacy policy, held that the conditions imposed on users constituted an abuse of dominance in the market for over-the-top messaging applications through instant messaging in India, imposed a penalty of ₹213.14 crore, and directed behavioural changes including restrictions on sharing user data with other Meta companies for advertising. The NCLAT, by its decision of late 2025, upheld the penalty and most of the remedies, including the requirements of clear notice, user choice and opt-out, but set aside both the blanket moratorium on data sharing for advertising purposes and the finding that Meta had leveraged its dominance in the messaging market to protect its position in online display advertising.²⁶ Meta and WhatsApp appealed to the Supreme Court. In early 2026 the Court, hearing the matter, was reported to have observed that the policy presented users with a take-it-or-leave-it choice, that users’ data was used to give Meta an advantage in online advertising, and that the Digital Personal Data Protection Act, 2023 does not itself address the value of the data that users surrender. The matter remains pending. It is the first occasion on which the apex court is being asked to decide directly whether the exploitation of personal data by a dominant platform can amount to an abuse under section 4, and its outcome will shape the ‘data as price’ theory discussed in Part III.

Apple and the global turnover challenge. The CCI’s investigation into Apple’s App Store practices began on a complaint filed in 2021 and was later joined by another complainant. The Director General’s report, reported to have been delivered in 2024, concluded that Apple had engaged in abusive conduct by requiring developers to use its proprietary payment system for in-app purchases. In November 2025 Apple challenged before the Delhi High Court the 2023 amendments and the 2024 penalty guidelines insofar as they permit penalties to be measured on global turnover, arguing that the provisions unlawfully expand the CCI’s powers and operate retrospectively. In May 2026, as the CCI prepared for a final hearing, a Division Bench led by the Chief Justice recorded the CCI’s assurance that no final order would be passed for the time being and directed Apple to cooperate with the proceedings.²⁷ The challenge raises a question of constitutional proportionality, and its outcome will determine how severe the deterrent against digital dominance in India can be.

BookMyShow. In March 2026 the CCI closed its case against BookMyShow, accepting that the platform was dominant in the relevant market but finding no abuse.²⁸ The order is a useful corrective to any impression that the CCI regards dominance in a digital market as inherently suspect. It illustrates the first limb of the two-step inquiry in action: dominance, even when conceded, does not itself establish a contravention.

The interface with data protection law. The WhatsApp litigation has brought into view the relationship between competition law and the Digital Personal Data Protection Act, 2023. The two regimes ask different questions. Data protection law asks whether personal data was processed lawfully and with valid consent; competition law asks whether a dominant firm exploited its position by imposing terms that users could not realistically refuse. The CCI has been careful to describe its inquiry in the second way, and the NCLAT’s retention of the user-choice remedies suggests that the two inquiries can coexist. Yet the overlap creates a risk of inconsistent obligations and duplicated proceedings, a risk that the suggestions in Part VII address.

Other pending matters. The CCI’s inquiries into e-commerce marketplaces, concerning preferential listings, discounting and exclusive arrangements,

²³ Ministry of Corporate Affairs, Committee on Digital Competition Law, *Report and Draft Digital Competition Bill 2024* (12 March 2024).

²⁴ *Google LLC v Competition Commission of India*, NCLAT, judgment of 29 March 2023.

²⁵ *Alliance of Digital India Foundation v Google LLC* [2022] CCI Case No 07 of 2020 (25 October 2022).

²⁶ *Meta Platforms Inc v Competition Commission of India*, NCLAT (2025), arising from the CCI’s order in *Suo Moto Case No 01 of 2021* (18 November 2024).

²⁷ *Apple Inc v Union of India*, Delhi High Court (writ petition challenging the 2023 amendments and the 2024 penalty guidelines), order of May 2026.

²⁸ *Bookmyshow* (Case No 46 of 2021), CCI order of 12 March 2026.

remain in the courts, where jurisdictional and procedural objections have repeatedly delayed adjudication. Their slow progress reinforces the concern that the *ex-post* model may not keep pace with markets that move in months.

C. International Developments

European Union. The first designations under the DMA took effect in September 2023, covering Alphabet, Amazon, Apple, ByteDance, Meta and Microsoft, and the obligations became applicable in March 2024.²⁹ In April 2025 the European Commission adopted its first non-compliance decisions, fining Apple €500 million and Meta €200 million. In the traditional enforcement track, the Court of Justice upheld the Commission's *Google Shopping* decision in September 2024, confirming the principle that self-preferencing by a dominant firm may be an abuse, while the General Court in the same month annulled the *AdSense* decision. The EU thus presents a mixed picture: the *ex-ante* regime is operational and producing penalties, while the *ex-post* cases have been uneven in their results.

United States. In *United States v Google LLC* the District Court held in August 2024 that Google had unlawfully maintained a monopoly in general search. In September 2025 the court declined to order divestiture of Chrome or Android, imposing behavioural remedies instead, including limits on exclusive distribution agreements and obligations to share certain data with qualified rivals, and the final judgment was entered in December 2025. Google has appealed.³⁰ In the separate advertising technology case, the court found in April 2025 that Google had unlawfully monopolised parts of the digital advertising market, and the remedies phase, in which the Department of Justice has sought divestiture, was still being determined at the time of the most recent reports available to this author. In *Federal Trade Commission v Meta Platforms, Inc* the District Court ruled in November 2025 that the Commission had not proved that Meta holds a monopoly in the relevant market, so that the Instagram and WhatsApp acquisitions would not be unwound; the Commission has appealed. The American record is therefore divided, and it shows how difficult it is for a court to prove monopoly power when the market itself is being redefined by new entrants and new products.

D. Assessment

Four themes emerge. First, Indian appellate bodies have so far accepted the CCI's analysis of digital dominance but have been willing to trim remedies, so the real contest has moved from *whether* a platform is dominant to *what* the proportionate response is. Second, the amendments of 2023 and the regulations of 2024 have given the CCI substantially stronger tools, including settlements, a transaction-value trigger for mergers and global-turnover penalties, but the last of these is untested. Third, the unfinished state of the Digital Competition Bill leaves India without the *ex-ante* regime that the Union already operates. Fourth, the divergent American and European outcomes suggest that no single model has been vindicated, which strengthens the case for the calibrated approach proposed below.

VI. RECALIBRATING THE LENS: TOWARDS A NEW FRAMEWORK FOR ASSESSING DOMINANCE

The Indian experience and international trends make clear that a recalibrated approach to assessing dominance is essential. The Competition (Amendment) Act, 2023 is a step in the right direction. The deal value threshold is a direct response to the phenomenon of 'killer acquisitions', in which large firms acquire nascent competitors before they can pose a real threat, and it acknowledges that the value of a target in the digital space often lies in its data or technology rather than in its current assets or turnover.³¹

Beyond legislative change, the analytical framework of the CCI must continue to evolve. Four directions are proposed.

1. **Prioritising dynamic factors.** Static metrics such as market share should be de-emphasised in favour of dynamic ones. The analysis should concentrate on barriers to entry and expansion, which in digital markets are often network effects, control over data and ecosystem lock-in. Section 19(4) already supports this, since 'entry barriers' and 'dependence of consumers' are statutory factors.
2. **Sophisticated market definition.** Defining the relevant market remains a challenge. Regulators may need to define markets more broadly around ecosystems, or around 'areas of competition', rather than narrow product categories, especially where multi-sided platforms are involved. For zero-price services, qualitative tests of substitutability, such as attention, quality and privacy, may need to replace the price-based hypothetical monopolist test.
3. **An effects-based approach.** Rather than inferring power from market structure alone, the CCI should increasingly examine the actual or likely effects of a firm's conduct on competition, innovation and consumer choice. The BookMyShow outcome shows that this is already possible within the existing framework, since dominance without demonstrable abuse is not penalised. An effects-based approach also supplies the discipline needed to ensure that remedies are proportionate, a concern that the appellate decisions in the Google matters have already raised.
4. **Embracing *ex-ante* principles.** A full DMA-style regime may not be immediately feasible, but the principles behind it are valuable. Pending the finalisation of the Digital Competition Bill, the CCI could use its advocacy and market study powers, as it has begun to do in artificial intelligence, to issue guidance on conduct in specific digital sectors, signalling to dominant platforms what would be regarded as unacceptable. Commitments under section 48B may serve the same purpose where a firm offers conduct changes at an early stage. Any eventual statute should, as the Committee on Digital Competition Law itself recognised, rest on objective designation criteria and should be proportionate in its burdens on smaller enterprises.

None of this means abandoning section 4. The text of the Act, particularly the factors in section 19(4), is flexible enough to accommodate the new considerations. Factors such as 'economic power', 'vertical integration' and 'entry barriers' can be interpreted dynamically to encompass data control,

²⁹ Commission Decision designating gatekeepers under Regulation (EU) 2022/1925 (September 2023); Commission decisions of 23 April 2025 on non-compliance by Apple and Meta.

³⁰ *United States v Google LLC* (DDC), liability opinion of August 2024, remedies decision of September 2025 and final judgment of December 2025.

³¹ Competition (Amendment) Act 2023, s 5.

network effects and ecosystem power. The key is not to rewrite the law, but to reinterpret and apply it with a sophisticated understanding of the new economic realities, while ensuring that the new tools of 2023 and 2024 are used consistently, transparently and with proper regard to proportionality.

VII. SUGGESTIONS

The analysis above shows that India does not need to abandon the architecture of the Act, but it does need to make that architecture more predictable, more proportionate and better resourced. The following suggestions are offered in four groups: legislative and interpretive, regulatory and procedural, institutional, and cooperative.

A. Legislative and Interpretive Suggestions

1. Issue guidance on dominance in digital markets. The open-ended final limb of section 19(4) already permits the CCI to consider data, network effects and ecosystem power, but it has done so case by case, and platforms cannot easily predict how the factors will be weighed. The CCI should issue consolidated guidelines, after public consultation, explaining how it assesses dominance in multi-sided and zero-price markets. The guidelines should state how data advantages, switching costs, multi-homing, the contestability of the platform's position and the relationship between different sides of the platform will be treated. Guidance of this kind is not binding law, but it would reduce uncertainty and make appeals more focused, much as the European Commission's guidance on exclusionary conduct has done.

2. Clarify the meaning of 'price' and 'consumer' for zero-price services. Section 4(2)(a) speaks of unfair or discriminatory prices and conditions. The Act should be read, or if necessary clarified, so that 'price' includes non-monetary consideration such as personal data, attention and degraded quality or privacy. An explanation to the section, or an authoritative interpretation in the guidelines, would settle that the surrender of data under take-it-or-leave-it terms can constitute an unfair condition, which would give statutory footing to the approach already taken in the WhatsApp matter.

3. Refine the Digital Competition Bill rather than abandon it. The experience of the European Union shows the value of a regime that identifies the largest gatekeepers in advance. India's version should be narrowly targeted and built around four design principles. Designation should depend on objective and published quantitative thresholds, with a rebuttable qualitative route, so that only enterprises with real gatekeeping power are caught. Obligations should be tailored to each core service, and not applied as a uniform list. A firm should be able to justify conduct by showing objective efficiencies or user benefits, so that the regime does not penalise genuinely pro-competitive integration. And decisions of designation and non-compliance should be appealable to the NCLAT on the merits, preserving the rule of law. A sunset or review clause, requiring Parliament to reassess the regime after a fixed period, would answer the concern that the technology it regulates will change faster than the statute.

4. Place the global-turnover power on a proportionate footing. The pending challenge in the Delhi High Court is a reminder that a power which is undefined in application invites constitutional objection. The CCI's penalty guidelines should explain when and why global turnover is used, require the CCI to show a rational link between the infringement and the turnover chosen, and make clear that the penalty must not exceed what is proportionate to the gravity and duration of the abuse. The NCLAT's approach in the Play billing matter, which tied the penalty to revenues connected with the abuse, offers a workable starting point. Legislative clarification would also reduce the cost of litigation for both sides.

B. Regulatory and Procedural Suggestions

5. Make settlements transparent and precedent-building. Settlements and commitments are valuable, but they must not hollow out the body of law that explains what dominance means in digital markets. The CCI should publish detailed, reasoned summaries of each settlement, including its preliminary view on market definition and dominance, and should invite comments from affected third parties before accepting commitments. It should also reserve settlement for cases in which the conduct is capable of being cured by remedies that can be monitored, and should continue to adjudicate cases that raise novel questions of principle, so that the law continues to develop.

6. Design remedies for effectiveness and proportionality. The appellate pruning of directions in the Google matters suggests that remedies should be tied more clearly to proven harm. The CCI should favour remedies that can be implemented and monitored, such as choice screens, data portability, interoperability on fair terms and bans on specific contractual restrictions, and should include a monitoring mechanism with reporting duties and, where necessary, an independent trustee. Each order should explain why the chosen remedy is the least intrusive means of restoring competition.

7. Speed up interim relief and adjudication. Digital markets can tip in months, but investigations in India have taken years. The CCI should make greater use of its power to grant interim relief under section 33 in cases where there is a strong prima facie case and a real risk of irreversible harm, and should adopt internal targets for the completion of Director General investigations. The Supreme Court and the NCLAT could assist by giving priority to appeals in digital cases, and by hearing them in dedicated benches familiar with the economics involved.

8. Strengthen merger control for data-driven deals. The deal value threshold is a welcome step, but its effectiveness depends on how it is applied. The CCI should publish guidance on how it values deals and determines 'substantial business operations in India', should develop theories of harm specific to data and nascent competition, and should examine whether it needs a power to review below-threshold transactions that raise credible concerns, subject to appropriate limits. A programme of retrospective review of cleared digital acquisitions would help the CCI learn whether its predictions about competition were accurate.

C. Institutional Suggestions

9. Build a dedicated digital markets capability. Whether or not the Digital Competition Bill is enacted, the CCI needs permanent in-house expertise in data science, computer science, behavioural economics and platform design. A Digital Markets Unit, staffed with technologists and economists on terms that can compete with the private sector, should support case teams, conduct market studies, monitor compliance with remedies and advise on merger review. Funding for this unit should be secured by statute, so that it is not dependent on annual allocations.

10. Use market studies as a standing tool. The CCI's market study on artificial intelligence shows the value of structured inquiry. It should adopt a programme of periodic studies of the most important digital sectors, such as app stores, online advertising, e-commerce and cloud services, and should

publish the findings with recommendations that identify conduct likely to attract enforcement. These studies would perform some of the work of *ex-ante* regulation without requiring new legislation, and they would supply the evidence on which any future statutory designation could be based.

D. Cooperative Suggestions

11. Coordinate with the data protection and sectoral regulators. The overlap between competition and data protection law needs a formal mechanism. The CCI, the Data Protection Board established under the Digital Personal Data Protection Act, 2023, the Ministry of Electronics and Information Technology and sectoral regulators of finance and telecommunications should enter into a memorandum or statutory consultation procedure, so that they share information, avoid inconsistent directions and allocate cases to the body best placed to resolve them. Consistency of this kind would give platforms clearer guidance and protect users more effectively.

12. Engage in international cooperation. Digital platforms operate across borders, and the largest ones face parallel proceedings in several jurisdictions. India should deepen its cooperation with competition authorities abroad through the International Competition Network, the BRICS competition forum and bilateral arrangements. Information exchange, convergence on analytical methods and coordination of remedies would reduce the risk of conflicting orders and would strengthen India's capacity to investigate evidence held overseas. India can also contribute to the global debate its perspective as a large, rapidly digitising market in which millions of users and small businesses depend on a handful of platforms.

Taken together, these suggestions are intended to preserve what is valuable in the Act, namely its flexibility, its focus on effects and its institutional independence, while giving the CCI the clarity, speed and technical capacity that the digital economy demands.

VIII. CONCLUSION

The journey of competition law into the digital era is one of adaptation and evolution. The traditional concept of 'dominance', forged in an economy of tangible goods and straightforward transactions, is being tested and reshaped by the intangible forces of data, networks and algorithms. This paper has argued that while the foundational principles prohibiting the abuse of market power remain as relevant as ever, the methodology for identifying such power must change.

A. Discussion of the Research Questions

The research has demonstrated that the traditional assessment of dominance, heavily reliant on market share, is insufficient for digital markets. The distinctive characteristics of the new economy, namely network effects, data as a barrier to entry, multi-sided platforms and powerful ecosystems, require a more nuanced analysis. The CCI has progressively adapted its approach, as its orders against Google and WhatsApp show, by looking beyond price to consider control over essential infrastructure and data. The developments of 2023 to 2026 have confirmed the trend: appellate bodies have largely endorsed the findings of dominance, the legislature has equipped the CCI with new instruments, and the courts are now testing the limits of its remedial power. A comparison with the European Union and the United States reveals a shared recognition that Big Tech warrants closer scrutiny, though the methods differ, from the *ex-ante* regulation of the European Union to the renewed use of traditional enforcement in the United States, and the results of both are still mixed.

B. Analysis of the Hypothesis

The hypothesis with which this discussion began, that traditional metrics for assessing dominance are insufficient for digital platforms and necessitate a more nuanced approach, stands validated. The analysis, from the theoretical account of digital market characteristics to the examination of recent case law, supports that conclusion. The evolving jurisprudence of the CCI is the strongest evidence of the shift from a structuralist to a more dynamic and multi-faceted assessment of dominance. This evolution is not a critique of the law itself, but a recognition that its application must be as dynamic as the markets it seeks to regulate.

C. The Road Ahead

The road ahead is challenging. The CCI must continue to build institutional capacity, incorporating expertise in data science and the economics of technology. If the suggestions made in Part VII are adopted, the CCI will be better placed to meet that challenge. The Supreme Court's forthcoming decisions in the Google and WhatsApp appeals, the outcome of the global-turnover challenge before the Delhi High Court, and the fate of the Digital Competition Bill will together determine whether India develops a coherent and credible regime for digital markets. The CCI must also strike a delicate balance, curbing anti-competitive behaviour without stifling the innovation that has made the digital economy a driver of growth. The meaning of 'dominance' will continue to be contested and refined, but one thing is certain: in the complicated world of digital competition, a simple lens will no longer suffice.