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INDIAN POLICY INSTRUMENTS AND OBJECTIVES OF THE PROPOSED DIGITAL COMPETITION ACT: IMPLICATIONS, CHALLENGES, AND WAY FORWARD

Research Report

Indian Policy Instruments and Objectives of the Proposed Digital Competition Act: Implications, Challenges, and Way Forward

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Acknowledgment

This report provides an overview of the manner in which policy objectives observed in the Parliamentary Standing Committee on Finance in its 53rd Report 'Anti-competitive conduct by big tech companies' interact with the broader policy framework. In conjunction, the report also identifies potential challenges towards harmonising the landscape, parallelly suggesting means and strategies that would aid in building synergy.

We are grateful to Mr. Kazim Rizvi for his supervision, prudence, and constructive criticism. His concern and attitude have enabled us to create this valuable resource for policymakers, policy-oriented civil society organisations, and the public.

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Last but not least, everyone associated with The Dialogue, including friends and relatives, deserves praise. Without their assistance and direction in this endeavour, this knowledge product would not have been feasible.

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A List of Abbreviations

Abbreviation	Full Form
ACP	Anti-Competitive Practices
AI	Artificial Intelligence
BIS	Bureau of Indian Standards
CCI/Commission	Competition Commission of India
CDCL	Committee on Digital Competition Law
CLRC	Competition Law Review Committee
DCA	Digital Competition Act
DoCA	Department of Consumer Affairs
DMA	Digital Markets Act
DMU	Digital Market Unit
DPIIT	Department for Promotion of Industry and Internal Trade
DRCF	Digital Regulation Cooperation Forum
DVT	Deal Value Threshold
DSA	Digital Services Act
EC	European Commission
ECN	European Competition Network
EDPS	European Data Protection Supervisor
EU	European Union
FDI	Foreign Direct Investment
FSLRC	Financial Sector Legislative Reforms Commission
FSDC	Financial Stability and Development Council
IS	Indian Standard
ICO	Information Commissioner's Office
M&A	Mergers and Acquisitions
MCA	Ministry of Corporate Affairs
MeitY	Ministry of Electronics and Information Technology
MoUs	Memorandum of Understanding
MRTP	Monopolistic and Restrictive Trade Practices
MSMEs	Micro, Small, and Medium Enterprises
NPCI	National Payments Corporation of India
P2B	Platform-to-Business Regulation
PSC	Parliamentary Standing Committee
PSP	Payment Service Provider
RBI	Reserve Bank of India
SIDI	Systemically Important Digital Intermediaries
SSMI	Significant Social Media Intermediaries
SDF	Significant Data Fiduciaries

S&C	Settlements & Commitments
SIDIs	Systemically Important Digital Intermediaries
TPAP	Third Party App Providers
UPI	Unified Payments Interface
UK	United Kingdom
VLOPs	Very Large Online Platforms

B List of Policy Instruments Discussed

Abbreviation	Full Form
Consolidated FDI Policy of 2020	FDI Policy
Consumer Protection (E-Commerce) Rules, 2020	E-commerce Rules
Competition Act, 2002	Competition Act
Proposed Amendments to Consumer Protection (E-commerce Rules), 2020	Draft E-commerce (Amendment) Rules
Consumer Protection Act, 2019	CPA
Digital Personal Data Protection Act, 2023	DPDP Act
Information Technology Act, 2000	IT Act
Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021	IT Rules 2021
Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2022	IT (Amendment) Rules 2022
Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011	SPDI Rules
Competition (Amendment) Act, 2023	Competition Amendment Act
Digital India Act	DIA
Personal Data Protection Bill, 2019	PDP Bill

Executive Summary

India has been evolving its efforts to frame enabling regulations for the digital landscape, with policymakers not only operationalising but also deliberating on various policy instruments, including legislation, subordinate regulations, rules, policies, and reports. A significant development in this trajectory is the discourse on ex-ante regimes presented by the Parliamentary Standing Committee on Finance (PSC) in its 53rd Report, 'Anti-competitive conduct by big tech companies' (the Report/PSC Report).[1]

The Report identified Anti-competitive practices (ACPs) requiring regulation through a proposed Digital Competition Act (DCA). By regulating these ACPs, the Report aims to fulfil specific regulatory objectives crucial for the growth of the digital ecosystem. The paper scrutinises how these objectives align with or conflict with other policy instruments of the Indian government, leading to potential conflicts, overlaps, and contradictions.

For instance, a key objective addressed by regulating ACPs involves limiting concentration in digital markets, both generally and in narrower segments like digital advertising. The Indian policy landscape also pursues these objectives through laws in the realms of competition, financial markets regulation, and Foreign Direct Investment (FDI). As a preliminary step, this paper discusses the status quo, exploring the objectives of the Report and their overlaps and conflicts with various proposed and existing Indian policy frameworks. In analysing these, the paper maps out broad challenges arising from these overlaps and conflicts.

Firstly, the paper highlights that harmonizing various existing and upcoming policy instruments applying to the digital landscape can be challenging, as evidenced by past experiences in resolving jurisdictional overlaps. Secondly, the paper discusses existing mechanisms for establishing inter-regulatory coordination, such as inter-regulatory references and Memoranda of Understanding (MoUs), highlighting their concerns. It emphasises the lack of reciprocity between regulators in the case of inter-regulatory references, where if X regulatory is obliged to consult Y regulatory before framing any regulation, the latter is not obliged to do the same before framing any regulations.

After highlighting the challenges with harmonising policy instruments and establishing inter-regulatory coordination, the paper discusses how these challenges could constrain both demand and supply-side actors. The foremost supply-side challenge emphasized in the paper is compliance uncertainty and the possibility of over-regulation. On the demand side, the paper points out that the current disjointed approach to grievance management might become confusing and burdensome. Finally, in addressing these challenges, the paper

[1] Standing Committee on Finance (2022-2023), *53rd Report 'Anti-competitive practices by big tech companies,* Ministry of Corporate Affairs (December 2022), https://loksabhadocs.nic.in/lsscommittee/Finance/17_Finance_53.pdf [hereinfafter "PSC 53rd Report"].

provides key recommendations, advocating for establishing a structured mechanism for enabling coordination between relevant ministries and regulators pre-emptively and safeguarding future laws like the DCA against potential overlaps and contradictions.

Figure (i): Means to Establish Harmonisation

1 INTRODUCTION

In India, the discourse on developing an ex-ante regime initiated with the publication of the 172nd Report on 'Promotion and Regulation of E-commerce in India' by the Standing Committee on Commerce (Commerce Committee) in June 2022.[2] Following that, the Parliamentary Standing Committee on Finance (PSC) released the 53rd Report on 'Anti-competitive conduct by big tech companies.' This report recommended strengthening the competition framework through an ex-ante regulatory approach, involving the identification of gatekeepers and the imposition of specific obligations. These Anti-competitive practices (ACPs) span various areas, including transactional practices like mergers and acquisitions (M&As), data practices, and the presentation of search results on platforms.

The Report advocates for the prohibition of certain ACPs ex-ante through a new Digital Competition Act (DCA), rather than relying on ex-post facto regulation under the existing Competition Act. All the ACPs listed below are recommended for prohibition, except for anti-competitive transactions. For these transactions, the Report proposes mandatory notification to the Competition Commission of India (CCI), regardless of whether they are notifiable under the Competition Act. The table below provides straightforward explanations of these ACPs to enhance understanding. It also includes examples of equivalent conduct in physical markets to offer a more informed perspective.

ACPs	Parallel example in physical markets
1. Anti-Steering Provisions: App stores prevent app developers from offering modes of payment to end-users other than the ones provided by the store.	In a food court, a consumer is made to pay for a food order using only the food court's rechargeable cards instead of the restaurant's own payment interface.
2. Pricing/Deep Discounting: E-commerce sites offer huge discounts and often below-cost pricing in a non-transparent manner. As a result, the ability of sellers to decide prices and make profits is impaired.	A tea manufacturer incurs a cost of Rs. 50 per packet, and supplies the same to a supermarket at an MRP of Rs. 70. The supermarket offers a discount of 50% on the MRP, leading to a loss of profit and authority to decide prices for the manufacturer.
3. Self-Preferencing: Platforms perform dual roles, i.e., of a marketplace and also of a	A general store sells both its own private label brand of coffee and also sells coffee of other

[2] Parliamentary Standing Committee on Commerce, Promotion and Regulation of E-Commerce in India, Parliament of India, 172nd Report (June 15, 2022), https://prsindia.org/files/policy/policy_committee_reports/SCR_e-commerce.pdf.

seller listing their products or services on the platform.	brands. The store deliberately places its own products near the front counter, while placing other products of other brands at the end of the aisle.
4. Exclusive Tie-ups: Platforms enter into agreements with brands to sell the latter's products exclusively on the platform.	A shoe manufacturer enters into an agreement with a chain of shoe stores, wherein the manufacturer agrees to sell its product exclusively through this chain of stores.
5. Bundling and Tying: The use of the platform's core service is conditioned on the purchase of another subsidiary service.	A printer company imposes a condition that to buy the printer, consumers will have to necessarily buy a packet of printer ink along with it.
6. Search and Ranking Preferencing: Digital companies rank certain results higher on the results page, due to bias in favour of sponsored results or self-fulfilled products.	A travel company publishes a print catalogue of the best and highest-ranked hotels in the city. The company puts its own subsidiary hotels on the first page while relegating other hotels to the last page of the pamphlet.
7. Data Usage: Market leaders amass a hoard of personal data over time, leading to tracking, profiling, and leveraging of data to strengthen their position in the primary and allied markets.	A customer submits his phone number on the purchase of a clothing product from a store. The store combines this information with the customer's email address, collected through its partner brands in their stores, and uses it to regularly communicate ongoing offers.
8. Restricting third-party applications: Users are restricted from the installation and effective use of third-party applications.	An automobile manufacturer modifies the internal mechanics of its cars to ensure that it is not possible for the consumer to install accessories like a music player belonging to a third-party company.
9. Anti-competitive transactions: Large firms buy startups, with the intention to disallow them from growing, without being subjected to merger control scrutiny.	The business of an established fast-food restaurant is reduced due to customers buying from a new, small eatery nearby. To avoid competition, the restaurant buys the eatery.
10. Advertising Policies: Companies engage in the consolidation of the digital advertising supply chain, leading to market concentration, self-preferencing, and conflict of interest.	A newspaper company gives more advertisement space and better prices in its daily publication to the products or services of its subsidiary logistics company, compared to the ads of other logistics businesses.

Since then, numerous developments have occurred, including the establishment of the Committee on Digital Competition Law (CDCL), tasked with analysing the subject in more detail and drafting a law. The following offers a broad overview of significant developments on the subject:

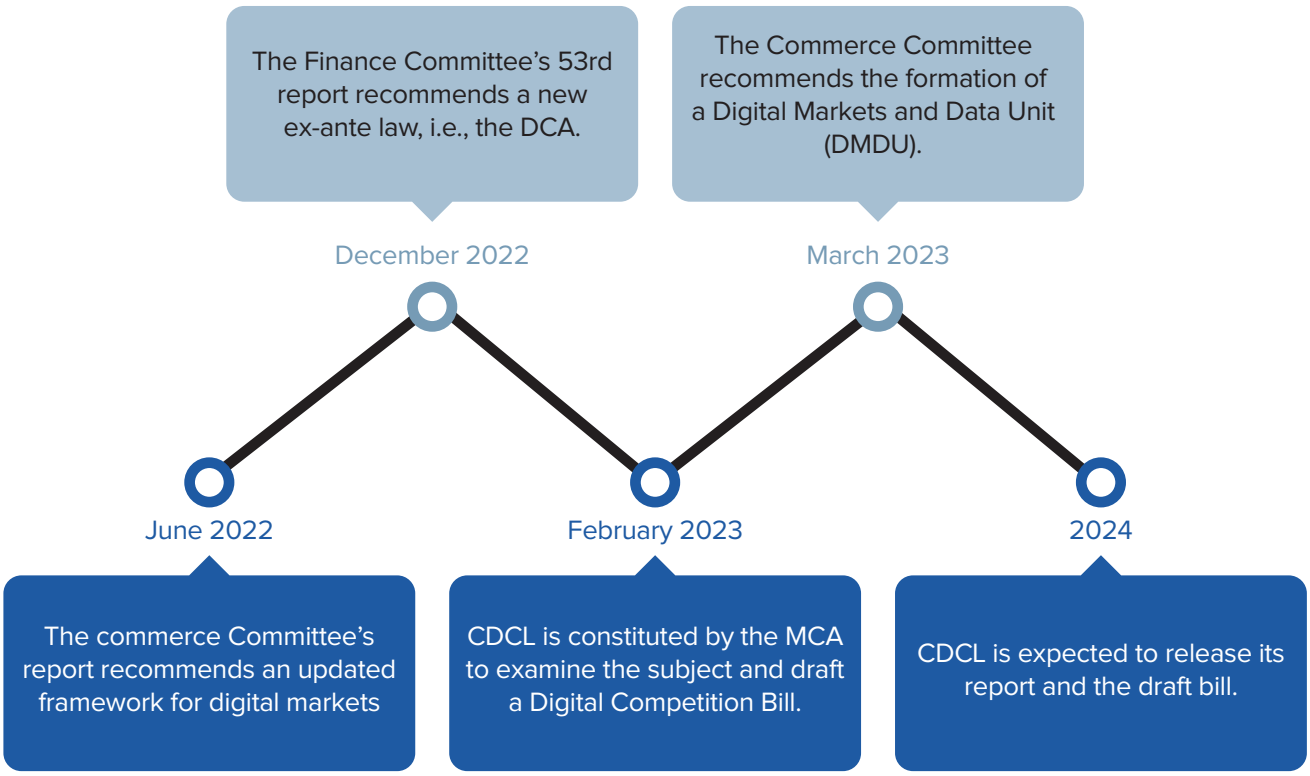

Figure (ii)

The PSC Report has identified 10 ACPs that, in its opinion, necessitate a new ex-ante regulation, i.e., the DCA. Through these ACPs, the Report aims to achieve key objectives, such as limiting concentration and its effects, ensuring a level playing field/neutrality of the platform, promoting healthy data utilization, safeguarding user interests, and establishing graded classification for enhanced compliance. This research paper discusses these objectives to highlight their overlaps, conflicts, and other potential implications in the broader regulatory landscape and other policy instruments of the country. The analysis aims to inform the efforts of policymakers, including the CDCL, the CCI, and relevant central ministries. To this end, the paper analyses a few challenges presented by these overlaps and conflicts, along with providing recommendations that policymakers may consider for their resolution.

2 Objectives of the Proposed DCA and the Broader Policy Framework

In this chapter, we will delve into various policy initiatives taken by the government to achieve objectives similar to those highlighted in the PSC Report. We will further examine how the measures proposed by the PSC Report address overlaps, conflicts, or complement other policy instruments. While the government charts its course through various policy instruments, including suggested measures to address ACPs, our paper underscores that the ultimate objectives of these instruments may align or be contradictory. Thus, by highlighting this congruence at the objective level, the paper underscores the need to establish inter-regulatory coordination for harmonisation and consensus building at the policy instruments level.

2.1. Limiting Concentrations and their Effects

According to the PSC Report, the digital landscape has recently witnessed an increase in market concentration, raising concerns about fair competition and consumer welfare.[3] Insufficient competitive pressures in the market may impact innovation, consumer choice, and heighten dependency of downstream players. Moreover, it is believed that mergers involving digital platforms can elevate the risk of a platform consolidating its power.[4]

The PSC Report addresses the issue of concentration by examining the practice of larger digital firms acquiring highly valued start-ups without being subject to merger control rules. The Report asserts that this practice hinders smaller firms from growing beyond a specific point.[5] Additionally, the substantial flow of data from the acquired digital firm may confer competitive advantages upon acquiring large digital technology firms. As data is the driving force in the digital economy, the Report further underscores concern regarding monopolistic control over data.[6]

Lastly, the Report expresses concerns about increasing market concentration, consolidation, and integration across various levels of the supply chain in the digital advertising market.[7] It proposes measures to curb the anti-competitive effects of concentration by mandating notifications by Systemically Important Digital Intermediaries (SIDIs) to the Competition Commission of India (CCI) regarding their merger and acquisition activities.[8] Additionally, it seeks to address the effects of data monopolization by prohibiting the cross-usage of data and the combination of data from different sources, such as business users and other services of the SIDIs. Finally, it aims to democratize access to data in the digital advertising sector to counter the effects of monopolization and recommends specific prohibitions on the

3. PSC 53rd Report.
4. Kanter, J. S. (2023). Digital markets and 'trends towards concentration.' *Journal of Antitrust Enforcement, 11(2)*, 143–148 https://academic.oup.com/antitrust/article/11/2/143/7232385.
5. PSC 53rd Report, Pg. 8.
6. PSC 53rd Report, Pg. 7.
7. PSC 53rd Report, Pg. 11.
8. PSC 53rd Report, Pg 33.

usage of end-user data.[9]

It is noteworthy that the efforts of the PSC and competition policymakers to tackle concentration or its effects in digital markets follows similar pre-existing initiatives. For a considerable amount of time, India has had sector-agnostic and sector-specific laws that extend beyond digital markets, often with similar or conflicting objectives.

Indian policymakers have sought to curb concentration and its effects for long, with the first notable effort being the Monopolistic and Restrictive Trade Practices Act (MRTP Act).[10] The MRTP Act aimed to prevent concentrations or dominance by mandating approvals for corporate restructuring or takeovers by enterprises with assets exceeding INR 20 crores.[11] The law further identified dominant undertakings based on a fixed criterion, considering enterprises with assets over INR 1 crore as automatically dominant.[12] The perspective of the Indian competition landscape on concentration has evolved from the time of the MRTP Act to the current Competition Act,[13] transitioning from an approach that discourages dominance to one that nurtures and promotes competition while prohibiting the "abuse" of dominance.[14]

Presently, the Competition Act seeks to limit the anti-competitive impact of mergers and acquisitions through its merger control regime. According to Section 5 of the Competition Act, any acquisition of enterprises or mergers exceeding specified threshold limits is considered a 'combination', necessitating notification to the Competition Commission of India (CCI). The CCI has also implemented a 'Green Channel' scheme, streamlining the approval process for combinations by providing deemed approval for those lacking an appreciable adverse effect on competition. The Green Channel scheme ensures a swift, transparent, and accountable review of combination cases.[15] The CCI's annual Report of 2021-22 indicates the successful adoption of the Green Channel scheme, with 52 cases received under it since its introduction. The report further notes that one out of four notices filed before the CCI in 2021-22 was under the Green Channel scheme.[16]

This underscores the commendable effort of the CCI in streamlining the combination process, promoting ease of doing business, and limiting anti-competitive conduct in the market. Furthermore, the Competition (Amendment) Act 2023 (Competition Amendment Act) introduced the concept of Deal Value Threshold (DVT), stipulating that transactions crossing the value threshold of INR 2000 crores, even if they do not meet existing asset and turnover thresholds, must be notified to the CCI. The CCI's submissions to the PSC emphasize that, given the asset-light nature of digital markets, the deal value threshold will enable capturing more

9. PSC 53rd Report, Pg 33.
10. Yadav, Dr. R. K. (2016). *Competition Law in New Economy* (first). Jagan Nath University Pg. 21 https://deliverypdf.ssrn.com/delivery.php?ID=481085124111103112097092121018126064104035090029001010110001116092118098096090118113041000008060051058110117090107069106088118060083005001074098091122094002086015023047064085005114015026000027020081124118092103067076087065105009092125074117112117007098&EXT=pdf&INDEX=TRUE.
11. The Monopolies and Restrictive Trade Practices Act,1969, https://www.indiacode.nic.in/repealed-act/repealed_act_documents/A1969-54.pdf.
12. The Monopolies and Restrictive Trade Practices Act,1969, https://www.indiacode.nic.in/repealed-act/repealed_act_documents/A1969-54.pdf.
13. Competition Act,2002, (14/01/2003) https://www.mca.gov.in/Ministry/actsbills/pdf/The_competition_Act_2002.pdf.
14. Competition Act,2002, (14/01/2003) https://www.mca.gov.in/Ministry/actsbills/pdf/The_competition_Act_2002.pdf.
15. Competition Commission of India. (n.d.). *Green Channel.* https://www.cci.gov.in/combination/green-channel-view.
16. Competition Commission of India, Annual report 2021-22, Page no. 17 https://www.cci.gov.in/public/images/annualreport/en/annual-report-2021-221671704224.pdf.

combinations in these markets.[17]

The enhanced deal value threshold criteria introduced through the Competition Amendment Act potentially aligns with the objectives of the 2002 Act's traditional merger control framework, aiming to prevent concentration in digital markets. It mandates the notification of transactions that were previously not required to be reported to the Competition Commission of India (CCI). The sector-agnostic nature of the framework equally encompasses digital markets, offering a potential avenue to achieve the objectives outlined in the Parliamentary Standing Committee's (PSC) report without unduly escalating merger notifications from certain technology companies. Introducing mandatory notifications, as suggested by the report, within the existing traditional competition framework, bolstered by the deal value threshold, might impose increased compliance strain[18] and affect startup funding.[19]

Addressing the objective of limiting concentration, as emphasized in the PSC report, the Reserve Bank of India (RBI) and National Payments Corporation of India (NPCI) are actively involved in managing concentration in the digital payments market. The current status regarding whether the proposed Digital Competition Act (DCA) will directly or indirectly regulate the financial payments sector remains uncertain. The Guidelines on volume cap for Third Party Application Providers (TPAP) in Unified Payments Interface (UPI) were established to encourage new players, fostering increased market share and mitigating risks in the UPI ecosystem.

As per the guidelines, *"Payment Service Provider ("PSP") and each TPAP should ensure that the total volume of the transactions initiated through the TPAP shall not exceed 30% of the overall volume of transactions processed in UPI, during the preceding three (3) months (on a rolling basis)".*[20] This rule imposes a cap on the volume of UPI transactions that any payment service provider can initiate to a threshold of 30%. Therefore, concerning the restriction of powers held by a select few digital market players, including those in the digital payment markets, the UPI Guidelines might overlap with the recommendations of the PSC Report.

In the realm of e-commerce, FDI policies play a pivotal role in shaping market dynamics. These policies aim not only to attract investment but also to stimulate technical innovation, fuel economic growth, and generate employment opportunities. The essence of FDI policies lies in striking a harmonious balance between encouraging international investment and safeguarding the nation's economic interests. In the FDI Policy, paragraph 5.2.15.2.4, Subsections iv and v, provide a directive that is particularly pertinent to the digital age.[21]

As per the FDI policy, e-commerce platforms operating as marketplaces are explicitly

17. PSC 53rd Report, Pg 19.
18. Portuese, A. (2022, August 24). *The Digital Markets Act: A Triumph of Regulation Over Innovation.* https://itif.org/publications/2022/08/24/digital-markets-act-a-triumph-of-regulation-over-innovation/.
19. Berre, M. (2020). Killer Acquisition Theory in the Digital Age. *Audencia Business School; Université de Lyon.* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3788536.
20. *Standard Operating Procedure (SOP) – Market Share Cap for Third Party Application Providers (TPAP).* (2021, March 25). https://www.npci.org.in/PDF/npci/upi/circular/2021/standard-operating-procedure-sop%E2%80%93market-share-cap-for-third-party-application-providers-tpap.pdf.
21. *Consolidated FDI Policy Circular of 2020* (Policy Circular DPIIT File Number 5(2)/2020; p. 50). (2020). Government of India Ministry of Commerce & Industry Department for Promotion of Industry and Internal Trade (FDI Division).https://dpiit.gov.in/sites/default/files/FDI-PolicyCircular-2020-29October2020_0.pdf [hereinafter "FDI Policy"].

prohibited from having ownership or control over the inventory of goods. This provision ensures that these platforms remain neutral intermediaries rather than performing a dual role with undue control over the market. Furthermore, there is a directive against e-commerce entities mandating any seller to exclusively sell products on their platform. This promotes a level playing field and ensures that sellers have the freedom to choose multiple platforms for their offerings. This further aims to maintain these platforms as impartial intermediaries, eliminating the possibility of undue control that could lead to market concentration. Moreover, to ensure compliance with these guidelines, e-commerce entities with FDI must obtain and maintain a report from a statutory auditor every year.[22]

The entry of foreign entities may also heighten concentration levels in host-country markets, potentially harming competition.[23] Furthermore, point ix of the FDI policy paragraph 5.2.15.2.4 aims to ensure a competitive and level playing field by prohibiting e-commerce entities from influencing sale prices and requiring the fair provision of services to vendors.[24] It further states that any provision of services to a vendor under terms not extended to other vendors facing similar circumstances is deemed unfair and discriminatory, reinforcing the commitment to a competitive and impartial marketplace.[25] This commitment not only promotes a level playing field but also actively contributes to cultivating a market environment where healthy competition flourishes, preventing concentration through vertical integration and ensuring equitable treatment of all participants. In the e-commerce market, vertical integration can potentially lead to market power concentration by combining production stages under one entity, resulting in the potential exclusion of rivals and distortion of competition. This focus of the FDI policy on preventing vertical integration aligns with the objectives of the PSC Report. The PSC Report and the FDI policy both imply negative impacts that excessive concentration has on market dynamics and stress the significance of creating a level playing field that is fair to all market players.

Therefore, through these provisions, the FDI policy ensures that the e-commerce landscape remains competitive, preventing a scenario where a few major foreign firms dominate the market and encouraging local entrepreneurship. This aligns with the broader objective of FDI policies, which is to promote balanced economic development while preventing market monopolization by a select few. The objectives outlined in the FDI policy, particularly concerning e-commerce, share similarities with the recommendations made in the PSC Report. Both the PSC Report and the FDI policy aim to ensure a competitive and fair marketplace, limit the concentration of power, and promote a level playing field for all players in the market.

Therefore, the objectives and concerns related to market concentration mentioned under the PSC Report potentially overlap with certain objectives of frameworks like the Competition Amendment Act, the UPI guidelines of NPCI, and the FDI policy. The DVT is a proactive measure in curbing

22. FDI Policy.
23. *Foreign Direct Investment for Development MAXIMISING BENEFITS, MINIMISING COSTS.* (2002), Pg.16 of the PDF. [Overview]. https://www.oecd.org/investment/investmentfordevelopment/1959815.pdf
24. FDI Policy.
25. FDI Policy.

concentration as an anticompetitive impact of combinations. Likewise, the existing UPI guidelines aim to impose volume caps for TPAP to foster competition by curbing market concentration. Similarly, the FDI policies governing the e-commerce sector, prohibiting inventory control and endorsing fair practices by e-commerce players, further reinforce the objective of having a level playing field. Therefore, these frameworks collectively serve as a deterrent against concentration by dominant firms, echoing the objective of the PSC Report to promote a competitive market and limit concentration.

In conclusion, it is pertinent to harmonise these frameworks to mitigate the risk of potential overlaps between them. A unified regulatory approach in India not only ensures consistency and clarity but also enhances the efficiency of oversight for the government by fostering an environment promoting innovation, fair competition, and growth in a coordinated fashion. The result can be a well-integrated and responsive framework that safeguards the interests of consumers and businesses while prohibiting concentration.

2.2. Achieving a Level Playing Field/Ensuring Neutrality of Platform

The ongoing discourse in digital regulation centres around the concept of neutrality.[26] As the internet gained widespread use, concerns arose regarding fair and unrestricted access, leading to the evolution of the 'net neutrality' principle. Initially applied to network communications, 'net neutrality' advocates for the equal and unbiased treatment of internet communications by service providers.[27] Over time, the need for neutrality expanded to various aspects of the digital space. In recent times, the emergence of the platform economy has reignited concerns about establishing a fair, neutral environment, particularly when a few dominant players control various stages of the supply chain.[28]

Platforms not only facilitate the exchange of content and ideas but also empower individuals to monetise their services and products, allowing businesses to establish their presence.[29] However, concerns arise when platforms, acting as intermediaries, selectively adjust their decisions on ranking, visibility, user choices, and other criteria crucial for downstream players and consumers. For instance, a platform mandating users to make payments exclusively through a specific operator potentially restricts users' choice.[30] Similar concerns emerge when platforms expand their role beyond mere intermediaries. For example, a food aggregator app operating its cloud kitchens may raise concerns about the platform's neutrality concerning the listing of other restaurants compared to its outlets.[31] Being in a position of strength, the platform can potentially manipulate rankings to prioritise the visibility of its outlets.[32]

[26] Hsing Kenneth Cheng, Subhajyoti Bandyopadhyay and Hong Guo. (n.d.). *The Debate on Net Neutrality: A Policy Perspective* [Warrington College of Business Administration University of Florida]. https://business.purdue.edu/academics/MIS/workshop/papers/sb_020907.pdf.
[27] Tim Wu, Network Neutrality, Broadband Discrimination, 2 J. ON TELECOMM. & HIGH TECH. L. 141 (2003). https://scholarship.law.columbia.edu/faculty_scholarship/1281 Network Neutrality, Broadband Discrimination.
[28] *Platform Neutrality Building an open and sustainable digital environment* (Opinion no. 2014-2). (2014). French Digital Council. https://cnnumerique.fr/files/uploads/2014/06/PlatformNeutrality_VA.pdf.
[29] Strowel A., Wouter V. *Digital Platforms: To Regulate or Not to Regulate?* (2016), https://ec.europa.eu/information_society/newsroom/image/document/2016-7/uclouvain_et_universit_saint_louis_14044.pdf.
[30] XYZ Vs. Alphabet Inc. And Others, Case No. 07 of 2020 (COMPETITION COMMISSION OF INDIA September 11, 2020). https://www.cci.gov.in/antitrust/orders/details/71/0.
[31] National Restaurant Association of India ('NRAI') Vs. Zomato Limited ('Zomato') & Others, Case No. 16 of 2021 (COMPETITION COMMISSION OF INDIA January 1, 2022). https://www.cci.gov.in/antitrust/orders/details/6/0 [hereinafter "NRAI v. Zomato"]
[32] Padilla, J., Perkins, J., & Piccolo, S. (2022). Self-Preferencing in Markets with Vertically Integrated Gatekeeper Platforms*. *The Journal of Industrial Economics, 70*(2), 371–395. https://doi.org/10.1111/joie.12287 https://onlinelibrary.wiley.com/doi/full/10.1111/joie.12287.

In addressing concerns surrounding platform neutrality, the PSC Report aims to rectify practices that jeopardise the creation of a level playing field and hinder non-discriminatory access for all participants.[33] Self-preferencing, as highlighted in the PSC Report, can significantly diminish the profitability of downstream players, resulting in an unfair advantage for the platform.[34] Similarly, anti-steering limits the seller's ability to direct end-users to other channels, hindering sellers from building a robust consumer base.[35]

The PSC Report references the CCI's prima facie order against Apple Inc., where the company's restrictions on third-party apps in its app store were noted to result in a denial of market access for app store developers.[36] Simultaneously, the bundling and pre-installing of products and services on smartphones by Android OS provided an unfair advantage to the detriment of other apps.[37] The PSC Report observes that these practices distort the level playing field, favouring certain players with significant market power.[38]

Consequently, the Report has recommended certain prohibitions and positive obligations. In addition to outright prohibiting certain practices like anti-steering and self-preferencing, the Report has prescribed specific requirements in the form of transparency and disclosures to strive for creating a level playing field for other players. For instance, the it suggests that search engine platforms should not only refrain from showing any preference for certain businesses over others, treating all businesses fairly and equally, but also provide fair and reasonable access to data for business users regarding how people search, click, and view results.[39]

Similarly, e-commerce platforms are recommended to grant businesses access to certain types of data to level the playing field with platforms that use extensive data to enhance their products. By providing equal access to data, smaller businesses or new entrants can also access crucial data to compete effectively and innovate within the ecosystem, allowing fairer competition to be achieved.[40]

Another positive obligation recommended by the Report includes interoperability.[41] Interoperability allows multiple platforms to communicate, allowing users to access services and data more freely. It also fosters a level playing field for businesses, enabling them to operate across multiple platforms without facing unfair restrictions. This reduces the dominance of any single platform and allows even nascent companies to grow. By enforcing these prohibitions and promoting practices like data sharing, the PSC Report seeks to create platform neutrality in a broader sense. This neutrality ensures that all players, whether big or small, have equal opportunities to compete and succeed without any undue advantage or discrimination, ultimately benefiting consumers with more choices and better services.

In India, various efforts in the form of policies and regulations have been made to achieve a similar objective, i.e., to promote neutrality in

33. PSC 53rd Report.
34. PSC 53rd Report.
35. PSC 53rd Report.
36. PSC 53rd Report.
37. PSC 53rd Report.
38. PSC 53rd Report.
39. PSC 53rd Report.
40. PSC 53rd Report.
41. PSC 53rd Report.

digital markets. For instance, overlaps exist in the realm of consumer protection, considering the framework's objective. The consumer protection law and policy aim to ensure consumer welfare and safeguard consumers from unfair practices, misinformation, and harm in the marketplace. This underscores the importance of platform neutrality as it avoids bias, favouritism, and information manipulation. It further fosters an environment where customers can make informed decisions with clarity and a variety of choices.

The Ministry of Consumer Affairs, Food, and Public Distribution notified the Consumer Protection (E-Commerce) Rules, 2020, to safeguard consumers from unfair trade practices in the e-commerce industry. Some practices aimed to be regulated by an ex-ante law are already under regulation or proposed to be regulated under these consumer policy frameworks. For example, the E-Commerce Rules mandate that every marketplace e-commerce entity discloses any differentiated treatment it offers to goods, services, or sellers of the same category in its terms and conditions.[42] Furthermore, the rules require e-commerce platforms to provide clear and transparent information about products, services, and sellers to consumers.[43] This ensures that consumers can make informed decisions, and all sellers have an equal opportunity to showcase their offerings. Additionally, the draft amendment to the E-Commerce Rules aims to further strengthen platform neutrality.

The Draft E-commerce (Amendment) Rules introduce additional requirements for marketplace e-commerce entities to follow. These rules mandate that marketplace entities must not use any information collected through their platforms to provide unfair advantages to their related parties or associated enterprises.[44] Furthermore, they must ensure that none of their related parties or associated enterprises are enlisted as direct sellers to consumers.[45] Additionally, the rules explicitly prohibit e-commerce entities from manipulating search results or search indexes in a way that deceives users.[46] By implementing these rules, the government aims to prevent any background arrangements or practices that could result in the preferential treatment of specific sellers or entities, reinforcing platform neutrality.

Another policy area with similar objectives is the FDI regime. FDI policies aim to attract capital, promote economic growth, and create job opportunities while balancing national interests. In the e-commerce sector, FDI policies play a crucial role in maintaining platform neutrality. The FDI policy addresses the e-commerce sector, ensuring that foreign-funded online marketplaces do not engage in unfair practices, such as mandating sellers to exclusively sell their products on their platforms.[47] However, certain aspects of the FDI Policy might overlap with the proposed ex-ante frameworks.

For instance, the proposed ex-ante frameworks aim to promote neutrality and equal opportunities for all sellers on e-commerce platforms by seeking to regulate self-preferencing. The FDI Policy contains provisions to regulate the participation of

42. F(G.S.R. 462(E).—In Exercise of the Powers Conferred by Sub-Clause (Zg) of Sub-Section (1) of Section 101 of the Consumer Protection Act, 2019 (35 of 2019), 2020, E-Commerce Rules, Rule 5(4), https://consumeraffairs.nic.in/sites/default/files/E%20commerce%20rules.pdf [hereinafter "Consumer Protection (E-Commerce) Rules"].
43. Consumer Protection (E-Commerce) Rules, Rule 5(3).
44. F(G.S.R. 462(E).
45. Draft E-commerce (Amendment) Rules, Rule 6(6)(b).
46. Draft E-commerce (Amendment) Rules, 5(14)(c).
47. FDI Policy, Para 5.2.15.2.4 (xi).

entities in e-commerce marketplaces. According to these provisions, if an entity has equity participation from an e-commerce marketplace entity or any of its group companies, or if the marketplace entity exercises control over the inventory of that entity, then the said entity is prohibited from selling its products on the platform operated by the marketplace entity.[48] The primary objective behind these provisions is to ensure a level playing field and platform neutrality, where no entity is given preferential treatment or unfair advantage based on its relationship with the marketplace entity or its affiliates.

The existing competition framework has recently been employed to ensure neutrality in digital markets. Competition law, with its overarching goals of promoting and maintaining fair competition, safeguarding consumer interests, and ensuring freedom of trade, aligns with the objective of neutrality. A level playing field and the prevention of bias in markets and platforms are crucial for upholding fair competition and safeguarding consumer interests.

Various cases have arisen where the Competition Commission of India (CCI) analysed the issue of preferencing to achieve neutrality objectives, spanning markets for app stores,[49] online goods,[50] online travel,[51] and operating systems.[52] For example, in the case of National Restaurant Association of India v. Zomato Limited and Bundl Technologies Private Limited ('NRAI v. Zomato'), the CCI investigated the relationship between food delivery platforms and their Restaurant Partners, covering both private brands and those operating through cloud kitchens. During the investigation, the CCI identified arrangements where preferential treatment was given to specific entities within this vertical relationship.[53] Additionally, practices of self-preferencing were scrutinized under section 3(4) of the Competition Act.

The PSC Report's proposal to ban self-preferencing overlaps with the objectives of the FDI Policy, Competition Act, and E-commerce Rules. While each regulatory body has its specific objectives and focus areas, the multitude of regulations introduced by various authorities can potentially lead to compliance overburden. Furthermore, multiple regulations targeting the same objective may create complexities for concerned stakeholders, including sellers and platforms in the realm of digital markets.

2.3. Enhancing Healthy Data Utilisation

Recognising that nothing comes for free in the platform economy, as payment is made in the form of personal and mixed data, the PSC Report discusses how data processing may raise competition concerns. A previous market study[54] conducted by the CCI discussed the relevance of data processing and privacy in competition regulations. The CCI's responsibility is to prevent practices with adverse effects on competition and sustain healthy competition in the market. With the emergence of digital markets, applying the Competition Act has become challenging. In a report published by the CCI

[48] FDI Policy, Para 5.2.15.2.4 (v).
[49] XYZ (Confidential) Vs. Alphabet Inc. and Others, Match Group, Inc. vs. Alphabet Inc. and Others, Alliance of Digital India Foundation vs. Alphabet Inc. and Others [Case No. 07 of 2020 with 14 of 2021 with 35 of 2021] https://www.cci.gov.in/antitrust/orders/details/1072/0.
[50] Delhi Vyapar Mahasangh and Flipkart Internet Private Limited and ors. [Case No. 40 of 2019]; https://www.cci.gov.in/antitrust/orders/details/110/0.
[51] Federation of Hotel & Restaurant Associations of India (FHRAI) and another Vs. MakeMyTrip India Pvt. Ltd. (MMT) and others with Rubtub Solutions Pvt. Ltd. Vs. MakeMyTrip India Pvt. Ltd. (MMT) and others [Case No. 14 of 2019 & 01 of 2020] https://www.cci.gov.in/antitrust/orders/details/1069/0.
[52] Umar Javed and Ors vs. Google LLC and Ors., Case No.39 of 2018; https://www.cci.gov.in/antitrust/orders/details/1070/0
[53] NRAI v. Zomato.
[54] CCI, Market Study on E-commerce Sector in India (2020), https://www.cci.gov.in/economics-research/market-studies/details/18/6.

on the telecom sector[55] in January 2021, the synergy between competition and privacy in a non-price competition market was analysed.

The report highlights that the abuse of dominance can lead to lower privacy protection for consumers, as suboptimal privacy standards can impact consumer welfare.[56] Moreover, the PSC Report,[57] aligning with other scholars,[58] notes that lower data protection can also result in exclusionary behaviour, falling within the ambit of the Competition Act. Additionally, the CLRC[59] examined the definition of 'price' under section 2(o) of the Competition Act. The CLRC concluded that the definition is broad enough to recognise non-monetary aspects like 'data' under section 2(o). The CCI further examined such observations regarding the intricate interlinking of data usage with users' privacy concerns in the case of In Re: Updated Terms of Service and Privacy Policy for WhatsApp Users (2021).[60]

While examining privacy and data protection from the consumer welfare standard, the CCI and the CLRC delved into competition aspects. The PSC, through its Report, attempts to address the competitive advantage that data provides to businesses, potentially distorting markets and creating entry barriers for emerging players.[61] Both the CCI and the PSC aim to establish regulations governing "data usage," yet their objectives differ. The former seeks to address the lack of competition, manifesting as privacy concerns, while the latter focuses on market concerns. Over time, data practices, encompassing privacy and more, have become integral to the competition discourse in India, acknowledged by regulators and government committees.

It's essential to note that various regulations and upcoming legislation, extending beyond the competition landscape, seek to regulate data and privacy concerns. Since the regulation of "data usage" is the means through which these objectives are pursued, identifying overlaps is crucial to eliminate conflicts.

The DPDP Act may intersect with some measures suggested by the PSC in various instances. Concerning data processing, the DPDP Act deems consent a legitimate tool for determining reasonable processing.[62] However, the Report's recommendation restricts certain forms of consensual processing. For example, the Report proposes that SIDIs must not cross-use personal data from relevant core services in other platform-provided services, including other core services.[63] Similarly, the DPDP

55. Market Study On The Telecom Sector In India. (2021). https://www.cci.gov.in/images/marketstudie/en/market-study-on-the-telecom-sector-in-india1652267616.pdf.
56. In concurrent with this outlook, the Competition Commission of India filed a suo moto case against WhatsApp concerning its update in terms and conditions and privacy policy (Suo Moto Case No. 01 of 2021) https://www.cci.gov.in/images/antitrustorder/en/0120211652258503.pdf
57. Market Study On The Telecom Sector In India. (2021). Retrieved from CCI: https://www.cci.gov.in/images/marketstudie/en/market-study-on-the-telecom-sector-in-india1652267616.pdf.
58. Khan, L. M. (2017). Amazon's Antitrust Paradox. Yale Law Review, 564-907.https://www.yalelawjournal.org/pdf/e.710.Khan.805_zuvfyyeh.pdf.
59. Report of the Competition Law Review Committee. Ministry of Corporate Affairs. (2019).https://www.ies.gov.in/pdfs/Report-Competition-CLRC.pdf.
60. Updated Terms of Service and Privacy Policy for WhatsApp Users, 01/2021 https://www.cci.gov.in/images/antitrustorder/en/0120211652258503.pdf.
61. Market leaders amass a hoard of personal data over time, leading to tracking, profiling, and leveraging of data to strengthen their position in the primary and allied markets.
62. The Digital Personal Data Protection Act, 2023, Section 6, https://www.meity.gov.in/writereaddata/files/Digital%20Personal%20Data%20Protection%20Act%202023.pdf [hereinafter "DPDP Act"].
63. PSC 53rd Report, Pg. 34.

Act[64] considers the legitimate interests of the data fiduciary and reasonable expectations of the data principal, subject to deemed consent. However, these purposes may involve cross-usage[65] or a combination of personal data, conduct that the PSC Report seeks to prohibit, conflicting and limiting the applicability of the deemed consent provision.

While various provisions of the data protection legislation are yet to be implemented, the IT Act already addresses privacy concerns emerging from data usage to a limited extent. Recommendations of the PSC have synergies or overlaps with the provisions of the IT Act. For instance, the IT Act prohibits unauthorised access to information or data.[66] Data usage practices falling within the ambit of the PSC Report involve unauthorized access or access for purposes initially not consented to, such as providing online advertising services and combining and cross-using personal data.[67] Therefore, restricting unauthorized access falls within the IT Act as well as the PSC Report's recommendations.

Furthermore, the SPDI Rules outline the contours for body corporates,[68] including digital platforms, for collecting and processing data. The SPDI Rules are founded on the concept of consent as a legitimate means to collect and process sensitive personal data,[69] allowing cross-use of data within an intra-group scheme. Besides, the SPDI rules permit data transfer to a third party, provided they don't further disclose the same.[70] Here, the third party also includes online advertising services. Therefore, these provisions within the SPDI contrast the PSC Report's recommendations to the DCA, where, for instance, the proposed SIDIs are restricted from processing data for online advertising services in certain circumstances. Also, the Report symbolically recommends restricting intra-group schemes and preventing the cross-use of personal data from the relevant core service in other services provided separately by the platform.

Another potential field of public policy presenting implications for healthy data usage practices is consumer protection. The Department of Consumer Affairs published the draft E-Commerce (Amendment) Rules in 2021. The draft Rules attempt to prohibit the abusive dominant position of e-commerce entities to an extent through regulating "Data Usage" patterns, hence there may be overlaps. For instance, Clause 6 (6) (a), (c) overlaps with the PSC Report's recommendations where unfair advantages, presenting themselves in the form of leveraging data to provide advertising services and other personalized services, are restricted.

While concerns might manifest in different forms and means, the ultimate regulatory goal of governing "data usage" patterns under different regulations, as discussed above and recommended by the PSC Report, is to enhance consumer welfare by enhancing their rights and providing them with choices. Therefore, there is a need to harmonise these

64. DPDP Act, Section 7.
65. Sharing of data collected by the core service providers with other portfolio service providers.
66. The Information Technology Act, 2000, Section 43(a) and (f) § Section 43(a) and (f). https://eprocure.gov.in/cppp/rulesandprocs/kbadqkdlcswfjdelrquehwuxcfmijmuixngudufgbuubgubfugbububjxcgfvsbdihbgfGhdfgFHytyhRtMjk4NzY= [hereinafter “IT Act”].
67. PSC 53rd Report, Pg. 33-34.
68. IT Act, Section 43A.
69. Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 SPDI Rule, Rule 5 (2021). https://www.meity.gov.in/writereaddata/files/GSR313E_10511%281%29_0.pdf [hereinafter “SPDI Rules”].
70. SPDI Rules, Rule 6.

aspects within the DCA to have a holistic picture of data usage patterns. Besides, as discussed in the CCI report on the telecom sector,[71] there is a need for better regulatory design and improved lines of communication between existing and upcoming regulators and CCI to harmonise decisions and ensure robustness and consistency.

2.4. Safeguarding End Users

The proposed ex-ante regime aims to safeguard end users in the market by explicitly guarding against any harm to their interests and providing fundamental protection. However, parallel policy instruments curb certain practices to protect consumers. For instance, the PSC Report emphasizes safeguarding consumer choice by prohibiting anti-steering conduct. Such practices often prevent consumers from availing alternate options that might offer more functionality and reduced costs.[72] These not only hinder the right to choose but also prevent customers from knowing about alternate options and may hinder substitution among other platforms.

Protection of consumer interests is primarily the mandate of consumer protection laws, with judgments supporting the fundamental principle of consumers' right to choose and be informed of their choices.[73] The consumer protection framework includes the parent legislation as well as rules and regulations, notably on e-commerce. However, while consumer protection laws are premised on the notion that consumers may have lower bargaining power in transactions and provide direct protection to consumers, competition law largely serves to safeguard consumers' interests through market regulation.

Accordingly, they provide different recourses.[74] For instance, where anti-steering provisions in competition law would regulate the entire market and hence prevent the curtailment of consumers' choices, consumer protection law would largely be invoked on the occurrence of a cause of action and may provide individualistic remedies. Therefore, while consumer protection legislation and competition legislation might have different approaches, they both are premised on the need to protect end users, i.e., consumers.

In India, the Consumer Protection Act 2019 (CPA) represents a significant step in ensuring that consumers are not subjected to unfair and harmful trade practices. Section 2(41) of the Act comprehensively defines "restrictive trade practice," encompassing various practices that can adversely affect consumers. This section aims to identify and categorize practices that manipulate prices, alter delivery conditions, or hinder the flow of goods and services, imposing unjustified costs or restrictions on consumers. It includes trade practices requiring consumers to purchase certain goods or services as a prerequisite for obtaining others. Such tying arrangements restrict consumer choice and can force them to acquire products or services they do not desire or need, ensuring consumers are not compelled to make unnecessary purchases. Similar concerns are also sought to be addressed in the PSC Report. The Report states, *'many digital firms force consumers to buy related services...this leads to the consumer not being given an*

[71] Market Study On The Telecom Sector In India. (2021). https://www.cci.gov.in/images/marketstudie/en/market-study-on-the-telecom-sector-in-india1652267616.pdf
[72] Ibid. at Pg. 40.
[73] Sadanand Chaudhary and Ors. vs. Amrapali Castel, Amrapali Group, Ultra Home Construction Pvt. Ltd. and Ors. (26.04.2023 - SCDRC Uttar Pradesh) : MANU/RG/0085/2023; Bombay High Court, The Film and Television Producers Guild of India Ltd. and Ors. vs. The Union of India and Ors. (30.06.2021 - BOMHC) : MANU/MH/1646/2021.
[74] Suhail Nathani, Pınar Akman, The interplay between consumer protection and competition law in India, Journal of Antitrust Enforcement, Volume 5, Issue 2, August 2017, Pages 197–215, https://doi.org/10.1093/jaenfo/jnx006.

option to choose, and may in fact lead to her paying higher prices ultimately'.[75]

The CPA is supplemented by the Draft E-commerce (Amendment) Rules, designed with a primary objective: safeguarding the interests of end-users or consumers in e-commerce. Rule 5(14) specifically aims to ensure that e-commerce entities operate in a manner benefiting consumers and preventing unfair pricing practices. Rule 5(14) provides that no e-commerce entity shall *"manipulate the price of the goods or services offered on its platform in such a manner as to gain unreasonable profit by imposing on consumers any unjustified price having regard to the prevailing market conditions, the essential nature of the good or service, any extraordinary circumstances under which the good or service is offered, and any other relevant consideration in determining whether the price charged is justified."*
Rule 5(14) explicitly prohibits e-commerce entities from manipulating prices of goods or services on their platforms to gain unreasonable profits. This prevents companies from exploiting their market position to overcharge customers, aiming to maintain fair and justifiable prices for consumers. The provision's objective aligns with certain conduct targeted by the PSC Report, specifically mentioning 'dynamic pricing,' which adjusts prices based on real-time data like consumer demand and preferences.

While dynamic pricing can benefit businesses, unregulated practices can harm consumers. Rule 5(14) addresses this by preventing e-commerce entities from excessively increasing prices based on dynamic pricing algorithms. The CPA and Draft E-commerce (Amendment) Rules collaborate to protect consumers from unjustified costs, restrictions, and manipulative pricing practices, enabling consumers to seek redressal and discouraging harmful business activities.

Another crucial framework ensuring consumer protection involves data protection laws. As highlighted earlier, data processing significantly influences the market and competition. The recently enacted DPDP Act aims to safeguard the data of data principals (individuals to whom the personal data relates)[76] by establishing a comprehensive regime that primarily regulates the conduct of data fiduciaries (entities determining the purpose and means of personal data processing).[77] Similar to the PSC Report, the DPDP Act focuses on protecting the rights and interests of end users/data principals, establishing conditions, requirements, and thresholds for personal data processing. However, it's important to note multiple instances where the DPDP Act deviates from the recommendations proposed in the PSC Report.

For reference, the DPDP Act prohibits data fiduciaries from engaging in tracking or behavioural monitoring of children or conducting targeted advertising directed at children (defined as individuals below the age of 18 years).[78] While the PSC Report recommends prohibiting entities from using personal information collected through third parties to provide online advertising services,[79] the DPDP Act outright bans

[75] PSC 53rd Report, Pg. 6.
[76] DPDP Act, Section 2 (j).
[77] DPDP Act, Section (i).
[78] DPDP Act, Section 9 (3).
[79] PSC 53rd Report, Pg. 33-34.

advertising targeted at children, addressing the subset of individuals with whom an entity might engage.

In addition to the specific policy instruments mentioned earlier, various regulatory bodies continuously develop and implement additional frameworks and regulations to further safeguard consumer interests. For instance, the Department of Consumer Affairs, in collaboration with the Department and Bureau of Indian Standards (BIS), introduced the Indian Standard (IS) 19000:2022 'Online Consumer Reviews' framework. This framework aims to safeguard consumer interests by addressing the issue of fake reviews on e-commerce platforms,[80] providing comprehensive guidelines and standards to enhance the authenticity, accuracy, and transparency of online consumer reviews. Ensuring trustworthy reviews from legitimate sources empowers consumers to make more informed purchasing decisions.

More recently, the Government notified guidelines on the regulation of dark patterns.[81] These guidelines on User Interface/User Experience interactions prioritize consumer protection by addressing and prohibiting deceptive design tactics that can manipulate or mislead users. Practices like false urgency, basket sneaking, confirm shaming, forced actions, subscription traps, interface interference, bait and switch, drip pricing, disguised advertisements, and nagging are prohibited, ensuring that consumers can make informed choices in their online interactions. Notably, certain practices prohibited by these guidelines align with those recommended in the PSC Report. For instance, the guidelines prohibit 'forced action,' mirroring concerns raised by the PSC Report around bundling and tying.

The term 'forced action' in the guidelines refers to compelling users to undertake specific actions, including purchasing additional goods, subscribing to services, or signing up for unrelated services.[82] This closely corresponds to the concept of bundling and tying, recommended to be prohibited in the PSC Report.[83] Bundling involves packaging multiple products or services together, often forcing consumers to purchase items they may not have otherwise chosen. Similarly, tying involves linking the sale of one product or service to the purchase of another unrelated one. The rationale behind these prohibitions is rooted in consumer protection, aiming to shield consumers from being coerced or manipulated into buying goods or services they neither need nor desire. This aligns with the broader objective of promoting fair and transparent business practices that prioritize the rights and choices of consumers.

Beyond addressing the issue of 'forced action,' the guidelines explicitly prohibit a practice known as “basket sneaking.”[84] This term refers to the inclusion of supplementary

80. Centre launches framework for safeguarding and protecting consumer interest from fake and deceptive reviews in e-commerce,21 NOV 2022, PIB, Delhi https://pib.gov.in/PressReleasePage.aspx?PRID=1877733.
81. Guidelines for Prevention and Regulation of Dark Patterns, 2023,Central Consumer Protection Authority,Department of Consumer affairs.https://consumeraffairs.nic.in/sites/default/files/file-uploads/latestnews/Draft%20Guidelines%20for%20Prevention%20and%20Regulation%20of%20Dark%20Patterns%202023.pdf.
82. Guidelines for Prevention and Regulation of Dark Patterns, 2023, Central Consumer Protection Authority, Department of Consumer affairs. Rule 4 r/w Annexure 1 (iv).
https://consumeraffairs.nic.in/sites/default/files/file-uploads/latestnews/Draft%20Guidelines%20for%20Prevention%20and%20Regulation%20of%20Dark%20Patterns%202023.pdf.
83. PSC 53rd Report, Pg. 33.
84. Guidelines for Prevention and Regulation of Dark Patterns, 2023, Central Consumer Protection Authority, Department of Consumer affairs. Rule 4 r/w Annexure 1 (ii).
https://consumeraffairs.nic.in/sites/default/files/file-uploads/latestnews/Draft%20Guidelines%20for%20Prevention%20and%20Regulation%20of%20Dark%20Patterns%202023.pdf.

items, such as products, services, or charitable donations, during the checkout process on a platform, without the explicit consent of the user. This practice results in the total amount payable by the user exceeding the originally intended amount for the selected product(s) and/or service(s). The prohibition on "basket sneaking" emphasizes the guidelines' commitment to safeguarding consumers from engaging in transactions they might not willingly choose, similar to the intention behind prohibiting tying and bundling.

Therefore, several frameworks currently exist that aim to safeguard end-users and recognise the importance of transparency and fairness in the consumer-business relationship. They seek to promote objectives similar to that of the PSC Report, including transparency, safeguarding consumer autonomy, and contributing to a digital environment where consumers are less vulnerable to deceptive practices, ultimately prioritising the protection of their rights and interests.

2.5. Establishing graded classification for enhanced compliance

The PSC Report recommends classifying companies as SIDIs based on three factors: market capitalization, revenue, and the number of active and end users on the platform. The rationale behind this classification is to prevent dominant platform companies from tipping the markets in their favour and negatively influencing the market.[85] The PSC Report suggests subjecting these companies to ex-ante regulations by imposing both positive and negative obligations on them. In competition law, the need for different levels of compliance requirements for players of different sizes, especially based on their size, has been observed.[86] Varying levels of regulations and compliance between large digital platforms, often classified as gatekeepers, and smaller entities such as startups and micro, small, and medium enterprises (MSMEs) are necessary due to inherent differences in their scale, impact, and market dominance. The former often wield significant influence over the digital ecosystem due to their extensive user base, market share, and economic capacity.[87]

These platforms often act as the primary gateway for users to access various online services. Given their dominant position, they have the potential to shape market dynamics, control competition, and impact user choices. Consequently, regulations specific to these entities have been deemed crucial by regulators to ensure fair competition, prevent anti-competitive practices, and safeguard user interests.[88] On the other hand, startups and MSMEs typically lack the market power and reach of their larger counterparts. Imposing the same regulatory burden on these smaller entities could disproportionately burden emerging businesses with compliance costs.[89]

A classification-based approach, categorising entities based on anti-competitive harms they cause and/or quantitative thresholds, can

85. PSC 53rd Report, Pg. 32.
86. OECD. Promoting Compliance with Competition Law (2011). https://www.oecd.org/daf/competition/Promotingcompliancewithcompetitionlaw2011.pdf.
87. Laux, J., Wachter, S., & Mittelstadt, B. (2021). Taming the few: Platform regulation, independent audits, and the risks of capture created by the DMA and DSA. *Computer Law & Security Review, 43,* 105613.https://www.sciencedirect.com/science/article/pii/S0267364921000868.
88. *Regulating digital gatekeepers Background on the future digital markets act.* (2020). [BRIEFING]. EPRS | European Parliamentary Research Service. https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/659397/EPRS_BRI(2020)659397_EN.pdf.
89. Laux J. Wachter S. and Mittelstadt B. *Taming the few: Platform regulation, independent audits, and the risks of capture created by the DMA and DSA* (2021). https://www.sciencedirect.com/science/article/pii/S0267364921000868#sec0011

enable greater market corrections by imposing compliance on SIDIs proportionate to their significance in the markets. Consequently, entities that pose less risk to the market competition due to their control over the market may be regulated 'lightly', as opposed to entities that have a significant potential for disrupting the market being regulated more 'heavily'.

Notably, jurisdictions across the globe are also moving towards a classification-based approach in their respective competition laws. The EU enacted the Digital Markets Act (DMA) to regulate platforms based on their entrenched market position.[90] Further, the EU's Digital Services Act (DSA) justifies the classification of 'very large online platforms' (VLOPs) by highlighting that these platforms, when they attain a substantial user base representing a significant share of the Union population, can give rise to societal risks that differ in both scope and impact from those posed by smaller platforms. The rationale is that the systemic risks emanating from very large online platforms have a disproportionately adverse effect on the EU, underscoring the need for specific regulatory attention to address these unique challenges.[91]

Aside from the EU, several other jurisdictions have brought in similar proposals with a focus on certain intermediaries only. Both the UK and the US[92] have introduced Bills to regulate competition in digital markets, classifying certain undertakings and platforms as 'strategic market status' and 'covered platforms'/'covered company', respectively. Japan enacted the Improving Transparency and Fairness of Digital Platforms Act,[93] which classifies certain entities as 'specified digital platforms' and subjects them to increased disclosure and fairness procedures. Germany brought the 10th Amendment[94] to its competition law,[95] which categorizes certain platforms as 'undertakings of paramount significance' and prescribes ex-ante rules for these entities.[96]

These classification-based mechanisms are not foreign to the Indian regulatory landscape and are present more prominently in domains concerning the use of technology and data. For instance, the IT Rules 2021 introduced a quantitative classification within intermediaries, where social media intermediaries were classified as 'significant social media intermediaries' (SSMI) based on the number of registered users[97] and are consequently subjected to additional due diligence requirements.[98] While this classification is similar to the quantitative thresholds introduced by the PSC Report, the

90. Regulation (EU) 2022/1925 of the European Parliament and of the Council, Official Journal of the European Union.https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R1925.
91. Digital Services Act,Single Market For Digital Services and amending Directive 2000/31/EC,REGULATION (EU) 2022/2065 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, Para 54,(19 oct,2022) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32022R2065.
92. American Innovation and Choice Online Act," S. 2992, Senate and House of Representatives of the United States of America in Congress assembled, (2022). https://www.congress.gov/bill/117th-congress/senate-bill/2992/text.
93. Act on Improving Transparency and Fairness of Digital Platforms (TFDPA),Feb 1 2021,METI. https://www.meti.go.jp/english/policy/mono_info_service/information_economy/digital_platforms/index.html#:~:text=Act%20on%20Improving%20Transparency%20and,enforced%20on%20February%201%2C%202021.
94. German Competition Act, Federal Ministry for Economic Affairs and Energy, GWB, 25 February 2020. https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Pressemitteilungen/2020/25_02_2020_Stellungnahme_10_GWB_Novelle.pdf;jsessionid=872AD8FF8C727D893244B9FAD192DBEF.1_cid390?__blob=publicationFile&v=2.
95. Competition Act (GWB) (German), https://www.gesetze-im-internet.de/englisch_gwb/.
96. Competition Act (GWB) (German), Section 19a, https://www.gesetze-im-internet.de/englisch_gwb/englisch_gwb.html#p0071.
97. Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Rule 2(v). https://www.meity.gov.in/writereaddata/files/IT%20Rules%2C%202021%20with%20proposed%20amended%20texts%20in%20colour.pdf
98. Ibid. at Rule 4.

PSC Report introduces more nuanced and specific requirements for its classifications.

Similarly, the DPDP Bill, 2022 proposed the classification of certain data fiduciaries as 'significant data fiduciary' (SDF) on the basis of factors such as risks to data principals, risks to the country's sovereignty or democracy, the volume and sensitivity of the data, among others; these fiduciaries are also subjected to additional obligations.[99] An explanatory note was released to give an understanding of the DPDP 2022 Bill, which relayed that such classification amongst fiduciaries is necessary owing to factors such as the volume of personal data and higher risk to data subjects which warrant these entities to be subjected to additional requirements.[100] This classification is retained in the recently enacted DPDP Act.[101] This qualitative classification is different from the quantitative classification proposed by the PSC.

The existence of multiple classifications in the digital realm can introduce several downsides, potentially leading to challenges in regulatory implementation and creating burdens for the entities subject to these regulations. One major downside is the risk of imposing a compliance burden on digital entities that operate across different service categories. If a company falls into multiple classifications, it may be required to adhere to distinct sets of regulations for each category. This can lead to a complex and resource-intensive compliance process, as the company must navigate and fulfil diverse regulatory requirements.

The potential for conflicting or overlapping requirements is another concern. Different regulatory classifications may come with distinct obligations, and companies falling into multiple categories may face challenges in reconciling these requirements. This could create ambiguity and uncertainty, as businesses struggle to determine which set of rules takes precedence. Conflicting regulations may hinder the effectiveness of compliance efforts and even create legal and operational risks for companies.

In some cases, different regulatory classifications might involve oversight by separate regulatory bodies. This can result in potential conflicts between these authorities, leading to inconsistencies in enforcement and interpretation of regulations. Such conflicts may impede a harmonised approach to digital governance and could generate confusion for both businesses and consumers. As an example, although the DMA explicitly provides that it will apply without prejudice to other extant frameworks, there might be certain conflicts with Platform-to-Business Regulation (P2B Regulations) and GDPR.[102] Navigating these conflicting recommendations can be complex for businesses, potentially leading to suboptimal or fragmented approaches to data processing. Therefore, while classification and targeted regulation are necessary for addressing specific challenges in the digital realm, careful consideration must also be given to avoid overburdening businesses, introducing conflicting requirements, and inhibiting innovation.

99. The Digital Personal Data Protection Bill, 2022, Clause 11 . https://www.meity.gov.in/writereaddata/files/The%20Digital%20Personal%20Data%20Potection%20Bill%2C%202022_0.pdf.
100. The Digital Personal Data Protection Bill, 2022, Para 13, Explanatory note, https://www.meity.gov.in/writereaddata/files/Explanatory%20Note-%20The%20Digital%20Personal%20Data%20Protection%20Bill%2C%202022.pdf.
101. DPDP Act, Section 10.
102. Konstantina Bania (2023) Fitting the Digital Markets Act in the existing legal framework: the myth of the "without prejudice" clause, European Competition Journal https://www.tandfonline.com/doi/full/10.1080/17441056.2022.2156730.

2.6. Broad overlaps with the objectives of the Proposed Digital India Act

In 2022, a Digital India Act (DIA) was proposed as a comprehensive framework that would regulate the digital sphere and replace the existing IT Act. In consultations organised on 23rd May 2023 and 9th March 2023, the Ministry of Electronics and Information Technology (MeitY) shed light on the key components of the DIA.[103] As per the consultation, the DIA would ensure an open internet characterised by features like 'choice', 'competition', and 'fair market access'. It was stated that the DIA would seek to regulate fair trade practices, prevent the concentration of market power and gatekeeping, and correct distortions through the regulation of dominant ad-tech platforms, app stores, etc. These present direct overlaps with the objectives of the PSC Report. For instance, objectives of regulating advertising policies, anti-steering provisions in relation to app stores, and unrestricted usage of children's data are sought to be regulated by both the DIA and the DCA.

In addition, the DIA proposes to classify intermediaries into different categories based on the service the intermediary is providing. These include e-commerce, digital media, search engines, gaming, AI, adtech, OTTs, etc. The consultation proposes different levels of liabilities for each class of intermediary rather than subjecting all classes to a blanket regulation. Similar to this, the DCA might also outline a list of core platform services that would fall under its purview. As a result, an intermediary that is categorised under the DIA may also be subject to the DCA, increasing the possibility of overregulation and the intermediaries' compliance costs.

[103] Ministry of Electronics and Information Technology, *Proposed Digital India Act, 2023,* Digital India Dialogues (March 09 2023), https://www.meity.gov.in/writereaddata/files/DIA_Presentation%2009.03.2023%20Final.pdf

3 Broad challenges

3.1. Difficulty in Harmonisation

All the PIs mentioned above are at various stages of development and are regulated by multiple regulators and ministries. The DCA would not be India's first effort to achieve the aforementioned objectives pertaining to digital markets, where there are various laws and regulations that directly or indirectly apply to the handling and functions of digital platforms. While the DCA is still in the making, several parallel policymaking exercises that have sought to formulate new frameworks with elements concerning the processing and protection of personal data, digital competition, consumer protection on e-commerce platforms, etc., have been undertaken.

Various ministries may adhere to their timelines to conclude these processes, resulting in a scenario where, in different sectors, existing laws may coexist with the more advanced requirements under the DCA; regulated entities might find it challenging to comply with both simultaneously. This section offers an overview of different government stakeholders regulating some of these instruments, along with the timelines associated with these instruments.

Data Privacy	Proposed Data Protection Board; MeitY
Foreign Direct Investment	Department for Promotion of Industrial and Internal Trade
Consumer Protection	Consumer Protection Authority; Department of Consumer Affairs
Competition	Competition Commission of India; Ministry of Corporate Affairs
Platform Regulation	MeitY, Ministry for Information Brodcasting
Online Payments	Reserve Bank of India; NPCI; Ministry of Finance

Figure (iii)

The DCA will introduce several relatively novel concepts with limited prior jurisprudence. Line ministries and regulators may unintentionally differ in their interpretations of details or granular issues, such as varying definitions or principles. This could undermine the primary purpose of introducing a comprehensive DCA. Minimising these concerns would, at the very

least, require concerted advocacy and awareness efforts within various arms of the government. Addressing this demands a coordinated inter-ministerial and inter-regulatory effort, as different ministries and regulators have their jurisprudence and purview over their sectors and functions.

Therefore, harmonisation of the same can prove to be a challenge where concerns about regulatory cooperation in India have been discussed extensively across multiple domains.[104] One recurring theme has been the need to minimise jurisdictional overlaps between regulators. As seen in the past, in some cases, these have often had to be resolved in court or by Parliament on a case-by-case basis.[105] Examples include conflicts between the CCI and regulators in the telecommunications and energy sector or between the Securities and Exchange Board of India and the Insurance Regulatory Development Authority of India.[106]

3.2. Concerns with Existing Inter-regulatory Coordination Mechanisms

Various mechanisms attempt to establish inter-regulatory coordination. The previous versions of the data protection bill included provisions for a system of inter-regulatory references, while the Personal Data Protection Bill 2019 (PDP Bill) mandated the Data Protection Authority (DPA) to consult with any relevant regulator before taking any action. This seems to draw from the Competition Act of 2002, which allows the CCI and other statutory authorities to make voluntary references to each other.[107] The PDP Bill goes a step further by requiring the DPA to consult other statutory regulators before taking any 'action'. However, these provisions on inter-regulatory references were removed from the DPDP Act.

Additionally, there is a concept of striking MoUs with other authorities or regulators in areas of concurrent jurisdiction, first suggested by the Financial Sector Legislative Reforms Commission (FSLRC) for coordination between financial sector regulators and the CCI, which is also a frequently used tool in other countries like the UK, EU, etc. The PDP Bill also states that, in addition to the provisions within the bill, significant data fiduciaries shall be regulated by regulations made by the respective sectoral regulators. However, again, this was removed from the enacted DPDP Act.

Moreover, these proposed mechanisms are also not free of concern. Regarding inter-regulatory references, the relevant provision did not define the term 'action'. Additionally, there is no process for regulators to identify whether or when their jurisdictions overlap in scope or what their jurisdictional boundaries are. Notably, while the X regulator must consult other regulators before taking any action on matters which may also fall within the jurisdictions of the latter set, there is no corresponding obligation on other regulators to consult the X regulator before taking any action. The ultimate burden of

[104.] Damodaran Committee, *Report of the Committee for Reforming the Regulatory Environment for Doing Business in India,* Ministry of Corporate Affairs (September 2, 2013), https://www.mca.gov.in/Ministry/annual_reports/DamodaranCommitteeReport.pdf; Financial Sector Legislative Reforms Commission, *Report of the Financial Sector Legislative Reforms Commission- Volume I: Analysis and Recommendations,* 14th Finance Commission (March 22, 2013), https://dea.gov.in/sites/default/files/fslrc_report_vol1_1.pdf.
[105.] Sen, S., Vivek, S., *The Regulatory Governance Project: An Approach Paper,* NLSIU (July 28, 2021), [https://static1.squarespace.com/static/6059f4f5b533f02b83a1e21a/t/6103e2accb41ff15e1e547c1/1627644588852/Regulatory+Governance+-+Approach+Paper+v.+1.1.pdf.
[106.] Sahithya, M., Chakraborty, A., *Sectoral Regulator and Competition Commission: Envisaging a Movement from Turf War to Reconciliation,* Vol 11, NALSAR Student Law Review, [125-167] [2017].https://www.nalsar.ac.in/images/NSLR%20Vol.11%202017.pdf.
[107.] The Competition Act, 2002, §21 and §21A, No. 12 of 2003, Acts of Parliament, 2002.

ensuring harmonisation thus lands on the X regulator without other sectoral regulators having to commit to harmonisation mutually. Besides, generally, MoUs do not specify what such an agreement will actually contain or how they may operate since there is no clarity in the operative phrase. Lastly, on sectoral regulation, there is no definition of a 'sectoral regulator', therefore, it is unclear how a system referring to sectoral regulation works.

3.3. Uncertainty for market players

The multiplicity of regulations and rules seeking to fulfil similar or conflicting objectives creates various supply-side challenges. Compliance uncertainty and the sentiment of over-regulation, which goes against expansionary policy objectives and contributes to investment barriers, emerge as the foremost supply-side issues. Applying different regulations to the same entity performing multiple functions would increase their compliance costs, potentially causing entry barriers for start-ups. Moreover, the multiplicity of laws can lead to regulatory arbitrage, as entities might comply only with the most favourable regulation, escaping other crucial mandates under different regulations. Additionally, a lack of uniformity in consumer or entity understanding could lead to contradictory interpretations in case of a dispute.

This uncertainty is more pronounced for market players in emerging technologies. Regulators need specific context to fully appreciate the potential of emerging technologies like Artificial Intelligence (AI) based on how they are employed. For example, the risks posed by a machine learning algorithm for a credit scoring system are very different from those posed by one for traffic prediction. Policymakers often rely on sectoral or context-specific expertise. On the flip side, while the DCA seeks to evaluate specific innovations viewed through the lens of consumer welfare and competition concerns, other regulators may also be exploring those innovations through their sectoral or domain-specific lens.

This may not be the most efficient approach, as there's a risk of duplication of efforts, making it more challenging to holistically examine the risks posed by market players. Therefore, this distributed operation and duplication of efforts by different regulators also create complexities for businesses exploring new technologies. They may have to approach different regulators to seek exemptions under distinct regimes for the same new technologies, causing roadblocks for start-ups in terms of additional costs and hindrance to service/product development. The lack of uniformity in the framework and format adds to compliance costs. Lastly, fragmented approvals of cross-sectoral innovation could slow down market adoption.

3.4. Demand-side Constraints

On the demand side, entities and consumers have various grievance redressal portals to lodge their complaints with regulators/policymakers. For instance, each financial sector regulator has its own ombudsman, and there is a Cyber Appellate Tribunal under the IT Act. It is still unclear if the DCA will include any grievance redressal mechanisms or if consumers will continue relying on filing information under the Competition Act. Grievances in the

technology sector would involve multiple tribunals and ombuds, and the current disjointed way of operating grievance management might become obsolete, confusing, and onerous.

This situation could also lead to regulatory uncertainty, where the regulator/policymaker might deny redressal to a particular grievance, stating that it doesn't fall within their ambit. Consumers may find it difficult to determine when to approach one channel over the other. There could also be differences in approach and processes, potentially creating stress for consumers as they navigate multiple mechanisms. Without mechanisms for knowledge and experience sharing across systems, different redressal systems could end up working in silos without learning from each other. For example, those handling data processing complaints could benefit those handling competition and consumer welfare grievances.

4 Recommendations and Way Forward

While drafting the proposed DCA, relevant ministries and regulators need to enhance coordination to carefully delineate the scope of the DCA and pre-emptively guard against possible overlaps and contradictions in the new law. The CDCL includes several stakeholders, such as MeitY, DPIIT, MCA, and DoCA.

However, the manner in which ministries will resolve relevant challenges arising from the multiplicity of laws is still unclear. It is crucial to instil transparency in these mechanisms to ensure a truly participative process involving the public policy ecosystem at large. Among other factors, it would be crucial to ensure that, in the long term, a structured mechanism for consistent coordination is curated. The framework may be established within the DCA or as part of other policy instruments as follows.

4.1. Structured Approach to Harmonisation

In the recent past, we witnessed increased inter-ministerial coordination and observed a 'whole of government' approach being adopted. For instance, MeitY and MCA have agreed that MCA will oversee competition-related issues in digital markets, while MeitY will restrict itself to dealing with sector-specific and technical issues.[108] However, exploring a more structured approach to harmonise these various allied laws holds value. A structured process of harmonisation could also unveil opportunities for synergy and integration, especially a shared approach toward establishing a risk-based framework. Regulators could collaborate to assess when higher standards are practically required and determine specific additional obligations needed to mitigate certain risks. For example, sectoral or domain-specific regulators could work with the CDCL to create regulations that cross-reference each other, enabling them to address issues falling within their regimes and under the DCA.[109]

For a structured approach to harmonisation, we may refer to the strategies proposed by the FSLRC, tasked with consolidating and harmonising a fragmented regulatory architecture in the financial sector.[110] One relevant strategy was the establishment of an 'interim coordination council' consisting of existing regulators and line ministries to ensure a smooth transition to a single unified financial law. A similar structure could be explored to ensure alignment between the DCA and the various existing and proposed laws. In the figure below, we outline a rough blueprint of a process that such a coordination council could follow.

[108] MCA to handle competition issues in digital markets; Meity to look at sector-specific, technical issues. (2023, July 4). *The Economic Times*.https://economictimes.indiatimes.com/tech/technology/mca-to-handle-competition-issues-in-digital-markets-meity-to-look-at-sector-specific-technical-issues/articleshow/101487116.cms?from=mdr.

[109] For a discussion on the concept of regulators cross-referencing regulations, see Perrin, W., Woods, L., Online Harms – Interlocking Regulation, Carnegie UK Trust, (2020) available at:https://carnegieuktrust.org.uk/blog-posts/online-harms-interlocking-regulation/.

[110] *The Financial Sector Legislative Reforms Commission* (Analysis and Recommendations Volume 1). (2013). Govt. Of India. https://dea.gov.in/sites/default/files/fslrc_report_vol1_1.pdf.

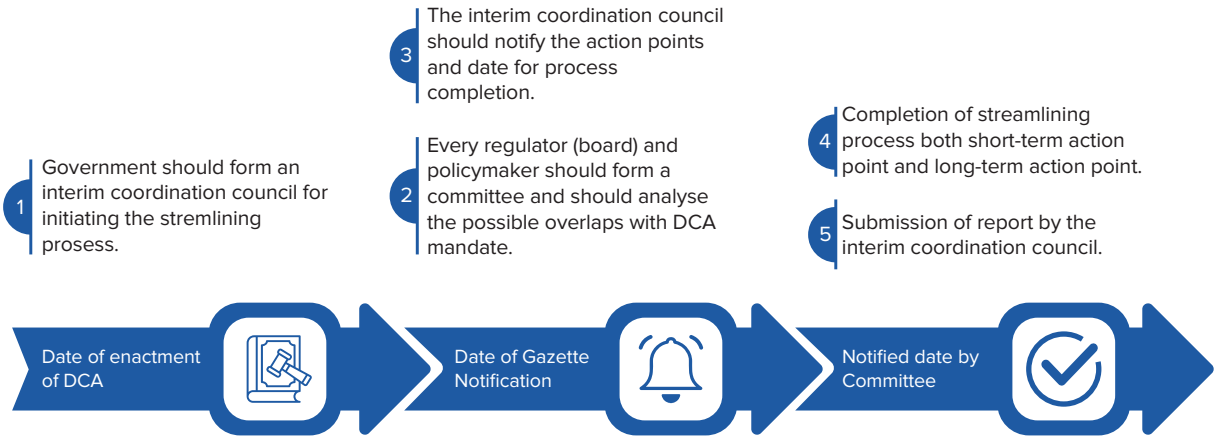

Figure (iv)

4.2. Forming Coordination Committees

Exploring the establishment of coordination committees to facilitate close collaboration among representatives of different regulators is worth considering. India already has examples of coordination committees serving this purpose. A notable instance is the Financial Stability and Development Council (FSDC), comprising the Governor of the RBI and representatives from various financial sector regulators,[111] primarily mandated to enhance inter-regulatory coordination. Another example is the Forum of Indian Regulators, formed by regulators in the electricity sector, which now includes representatives from the Telecom Regulatory Authority of India and the CCI. Although registered as a society and lacking a legal mandate, this body aids participating regulators in sharing best practices and developing common strategies to address new regulatory challenges.

Drawing lessons from other jurisdictions, Australia has the Digital Platform Regulators Forum, where four regulators collaborate on issues like consumer protection, online safety, privacy, and personal data protection and their intersection.[112] This initiative provides a collective of diverse regulatory perspectives and offers a one-stop shop for government policymakers to engage with regulators on digital platform-related issues, ensuring consistency in digital regulation.

Similarly, in the UK, four regulators—Competition & Markets Authority, Information Commissioner's Office (ICO), Financial Conduct Authority, and Office of Communications—have established a Digital Regulation Cooperation Forum (DRCF) to support regulatory coordination and cooperation on online services and digital markets.[113] They publish detailed work plans and annual reports, outlining their goals of regulatory coherence, collaboration, and capacity-building.[114] Regarding ex-ante laws

[111] Reserve Bank of India, Financial Stability Report, (2010), https://m.rbi.org.in/scripts/PublicationReportDetails.aspx?UrlPage=&ID=586.
[112] Australian Competition & Consumer Commission, Agencies form Digital Platform Regulators Forum, (2022), https://www.accc.gov.au/media-release/agencies-form-digital-platform-regulators-forum.
[113] Competition & Markets Authority, Digital Regulation Cooperation Forum, (2020), https://www.gov.uk/government/publications/digital-regulation-cooperation-forum .
[114] Digital Regulation Cooperation Forum, Plan of work for 2022 to 2023, (2022), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1071501/DRCF_Annual_Workplan.pdf.

for competition, the EC, as part of the DMA, has established a high-level group composed of representatives from various European government stakeholders, including the European Data Protection Supervisor (EDPS) and European Data Protection Board, to provide expertise and advice for the coherent and complementary implementation of the DMA and other regulations. A similar framework may be considered as part of the DCA in India.

These examples suggest the merit of establishing a formal body to build a harmonised understanding of the digital public sphere and promote regulatory coordination. Such a body could perform roles akin to those carried out by coordination bodies in the discussed jurisdictions, like the DRCF in the UK or the DPRF in Australia.

4.3. Calibrated Grievance Redressal

The existing grievance management system faces two significant problems: (a) a lack of horizontal coordination (in terms of various coexisting systems and mandates); and (b) a lack of agility in terms of resolution. Therefore, we propose a calibrated hierarchical grievance redressal mechanism with horizontal and vertical coordination (between different elements of the system) and agility proofing. Thus, if a grievance redressal mechanism is established under the DCA, it must coexist with several other mechanisms found under current laws and regulations. For example, intermediaries under the IT Act must appoint a grievance officer and provide a mechanism for users to file complaints, while account aggregators or e-commerce entities must appoint a grievance redressal officer and implement a policy for the disposal of customer complaints.

The coexistence of these frameworks underscores a strong emphasis on consumer grievance redressal, especially in the context of digital technologies. Furthermore, we acknowledge that once established, the grievance redressal mechanisms under the DPDPA will also coexist with several other mechanisms found under current laws and regulations. For instance, intermediaries under the IT Act must appoint a grievance officer and provide a mechanism for users to file complaints, and account aggregators or e-commerce entities must appoint a grievance redressal officer and put in place a policy for the disposal of customer complaints. This coexistence underscores a robust commitment to addressing consumer grievances, particularly in the realm of digital technologies.

4.4. Ascertain the extent of traditional competition frameworks' sufficiency

Each of the 10 ACPs can fall under the regulation of the Competition Act. On the antitrust end, the CCI has either published final orders or is currently investigating each of these ACPs, excluding anti-competitive transactions, which fall under the purview of merger control. However, the key rationale justifying an ex-ante framework is that traditional regimes take a significant amount of time to address anti-competitive harms. On average, the CCI has taken 1305 days to issue

a final order in cases involving digital markets, starting from the date of its prima facie order. When evaluating the need for a new law, it's crucial to analyse the extent to which an ex-ante framework will practically reduce the time taken to address anti-competitive harms.

For instance, the DMA in the EU broadly includes the following key timelines: After the Act takes effect, any entity meeting the specified thresholds must inform the Commission within 2 months.[115] Once notified, the Commission has 45 working days to designate the entity as a gatekeeper.[116] The gatekeeper must then produce a compliance report within 6 months of being designated.[117] If a gatekeeper is found non-compliant, the Commission has 12 months from the start of proceedings to issue a non-compliance decision.[118] This implies that it may take approximately two years for the Commission to address anti-competitive behaviour from the designation process to the non-compliance decision.

Furthermore, the extent to which concerns about the time taken can be addressed by the Settlements & Commitments (S&C) framework introduced by the Competition Amendment Act will need to be seen.[119] A study analysing 84 cartel cases in the EU found that settlement procedures reduced the duration of settled cases by around 9 months.[120] On the merger control end, it's important to analyse the extent to which the DVT criteria can address the issue of digital transactions evading scrutiny by the CCI. It may be prudent to note that the criterion has been adopted for this purpose in multiple other jurisdictions, including the United States,[121] Austria,[122] and Germany,[123] and may warrant consideration in the British context before being complemented by a new provision in the DCA altogether.

[115] Council Regulation 2022/1925, art. 3(3), 2022 OJ (L 265) (EC). https://eur-lex.europa.eu/eli/reg/2022/1925.
[116] Council Regulation 2022/1925, art. 3(4), 2022 OJ (L 265) (EC). https://eur-lex.europa.eu/eli/reg/2022/1925.
[117] Council Regulation 2022/1925, art. 3(10); art. 11, 2022 OJ (L 265) (EC).https://eur-lex.europa.eu/eli/reg/2022/1925
[118] Council Regulation 2022/1925, art. 29, 2022 OJ (L 265) (EC) .https://eur-lex.europa.eu/eli/reg/2022/1925.
[119] Competition (Amendment) Act , 2023, 185-C f 2022, § 48A and § 48B, March 29 2023 .https://prsindia.org/files/bills_acts/acts_parliament/2023/The%20Competition%20(Amendment)%20Act,%202023.pdf
[120] Saksham Malik, Bhoomika Agarwal, *Primer, 53rd Report of the Standing Committee on Finance and a Potential Ex-Ante Competition Law Regime,* The Dialogue, https://thedialogue.co/wp-content/uploads/2023/03/Primer-53rd-Report-of-the-Standing-Committee-on-Finance-and-a-Potential-Ex-Ante-Competition-Law-Regime.pdf.
[121] 15 U.S.C. §18a.
[122] Federal Cartel Act, 61/2005, § 35(1a), §9(4).https://www.bwb.gv.at/fileadmin/user_upload/PDFs/Cartel_Act_2005_Sep_2021_english.pdf.
[123] Gesetz gegen Wettbewerbsbeschränkungen, Bundesgesetzblatt, §107.https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Pressemitteilungen/2020/25_02_2020_Stellungnahme_10_GWB_Novelle.pdf;jsessionid=872AD8FF8C727D893244B9FAD192DBEF.1_cid390?__blob=publicationFile&v=2.

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