

### BRIEF

Report of the Committee on Digital Competition Law and Draft Digital Competition Bill, 2024





### BRIEF

### Report of the Committee on Digital Competition Law and Draft Digital Competition Bill, 2024

**Authors -** Aman Mishra, Bhoomika Agarwal and Saksham Malik

**Designer -** Shivam Kulshrestha

The Dialogue<sup>™</sup> is a public policy think tank with a vision to drive a progressive narrative in India's policy discourse. Founded in 2017, we believe in facilitating well-researched policy debates at various levels to help develop a more informed citizenry, on areas around technology and development issues. The Dialogue<sup>™</sup> has been ranked as the world's Top 10 think tanks to watch out for, by the Think Tank and Civil Societies Programme (TTCSP), University of Pennsylvania in their 2020 and 2021 rankings.

For more information https://thedialogue.co

#### Suggested Citation

Mishra, A., Agarwal, B. & Malik, S. (April, 2024) Explainer: Report of the Committee on Digital Competition Law and Draft Digital Competition Bill, 2024. The Dialogue

Catalogue No TD/CDM/BR/0424/01

Publication Date April 3, 2024

#### Disclaimer

The facts and information in this report may be reproduced only after giving due attribution to the authors and The  $Dialogue^{M}$ .

### **C**ONTENTS

1. Introduction	1
2. Key Parts	3
2.1. Scope of Law	3
2.2. Designation of Enterprises	4
2.2.1. Quantitative Criteria for designation	5
2.2.2. Qualitative Criteria for SSDE	7
2.2.3. Designation Process	8
2.3. Obligations	9
2.4. Nature of Obligations	9
2.5. Exemptions	10
2.6. Inquiry Process	10
2.7. Settlement and Commitments	10
2.8. Powers of DG and CCI	11
2.9. Extra Territoriality	11
2.10. Penalties	11
2.11. Limitation Period	12
2.12. Execution of Orders	13
2.13. Other Key Parts	13
2.14. Appellate Process	13
2.15. Powers of Central Government	14
2.16. Regulation Making Power	15
2.17. Guideline Issuing Power	16

### **F**IGURES

Figure 1: Policymaking process of digital competition law in India	1
Figure 2: Flowchart on designation of enterprises	4
Figure 3: Flowchart on the designation process	8

### LIST

List 1: Core Digital Services	3
List 2: Principle-based obligations under the draft law	9
List 3: Powers of Central Government under DCB	14

### **T**ABLES

Table 1: Quantitative Criteria for Designation	6
Table 2: Qualitative criteria for designation	7
Table 3: Penalties under the Draft DCB	11

# 1 Introduction

The last decade has been marked by rapid digitalisation, leading to the emergence of novel business models that have garnered increased scrutiny from regulators worldwide. The increasing significance of digital platforms prompted the Parliamentary Standing Committee on Finance (PSC) to review potential anti-competitive practices prevalent in digital markets. The PSC tabled its report on 'Anti-Competitive Practices by Big Tech Companies' in December 2022, delineating ten anti-competitive practices (ACPs) with a recommendation to explore

framing a 'Digital Competition Act' (DCA) – which could potentially contain a set of ex-ante obligations and prohibitions for players that it termed as 'systemically important digital intermediaries' (SIDIs).

Subsequently, the Ministry of Corporate Affairs (MCA) constituted the Committee on Digital Competition Law (CDCL/Committee) with the mandate to assess the need and feasibility of an ex-ante framework and develop a draft DCA.



Figure 1: Policymaking process of digital competition law in India

<sup>&</sup>lt;sup>1.</sup> Standing Committee on Finance, Seventeenth Lok Sabha, Anti Competitive Practices by Big Tech Companies, Fifty Third Report [December 2022] https://loksabhadocs.nic.in/lsscommittee/Finance/17\_Finance\_53.pdf

The Committee has finally released its report ('the Report') recommending an ex-ante framework for the regulation of digital markets along with the Draft Digital Competition Bill 2024 ('DCB/the Bill'), specifically to regulate large digital enterprises, i.e., Systemically Significant Digital Enterprises (SSDEs).<sup>2</sup> These measures aim to identify large digital enterprises with a significant presence in India and establish pre-determined rules for their conduct to prevent anti-competitive behaviour. The Committee

emphasises the importance of ensuring that such measures do not impede innovation for small enterprises while recommending strengthening the Competition Commission of India's (CCI) technical regulation capacity.

This brief provides a brief overview of the CDCL Report, synthesised with the draft DCB. It is hoped that the brief enables key stakeholders to understand various nuances of the latest development.

<sup>&</sup>lt;sup>2</sup>·Ministry of Corporate Affairs, Report of the Committee on Digital Competition Law [March 2024] (hereinafter 'CDCL Report') https://www.mca.gov.in/bin/dms/getdocument?mds=gzGtvSkE3zIVhAuBe2pbow%253D%253D&type=open

# 2 Key Parts

### 2.1. SCOPE OF LAW

The draft DCB proposes categorising certain enterprises that provide Core Digital Services (CDS) as SSDEs and Associate Digital Enterprises (ADEs). The DCB identifies nine digital services as CDS on the basis of their susceptibility to concentration.<sup>3</sup> Entities involved in these nine CDSs, that meet the prescribed quantitative and qualitative criteria as per the Bill, can be designated as SSDEs.<sup>4</sup>

Each service category is defined within the DCB, outlining its specific characteristics and scope of regulation.<sup>5</sup> For instance, online search engines include services that enable users to input queries and

retrieve information from websites. Online intermediation services have been defined to encompass various digital platforms, including web hosting, payment sites, auction sites, online marketplaces, and aggregators offering diverse services like mobility aggregation, food ordering, delivery, and match-making.<sup>6</sup>

The Report also acknowledges the dynamic nature of fast-paced digital markets and, therefore, recognises the need for agility in identifying digital services under the Draft DCB.<sup>7</sup> As a result, the Committee has suggested incorporating the list of CDS via a Schedule to the DCB to provide flexibility for the Central Government to include new digital services as needed.<sup>8</sup>

Online Search Engines	Online Social Networking Services	
Video-Sharing Platform Services	Interpersonal Communications Service	
Operating Systems	Web Browsers	
Cloud Services	Advertising Services	
Online Intermediation Services		

**List 1: Core Digital Services** 

<sup>&</sup>lt;sup>3.</sup> Page 97, Para 3.2, CDCL Report.

<sup>&</sup>lt;sup>4</sup> Schedule 1 to the Draft Digital Competition Bill, 2024, Annexure IV, CDCL Report (hereinafter 'Draft DCB').

<sup>&</sup>lt;sup>5</sup> Page 191, Schedule 1 to the Draft DCB.

<sup>&</sup>lt;sup>6</sup> Page 192, Schedule 1 to the Draft DCB.

<sup>&</sup>lt;sup>7</sup> Page 98, Para 3.2, CDCL Report.

<sup>8.</sup> Page 99, Para 3.6, CDCL Report.

## 2.2. DESIGNATION OF ENTERPRISES

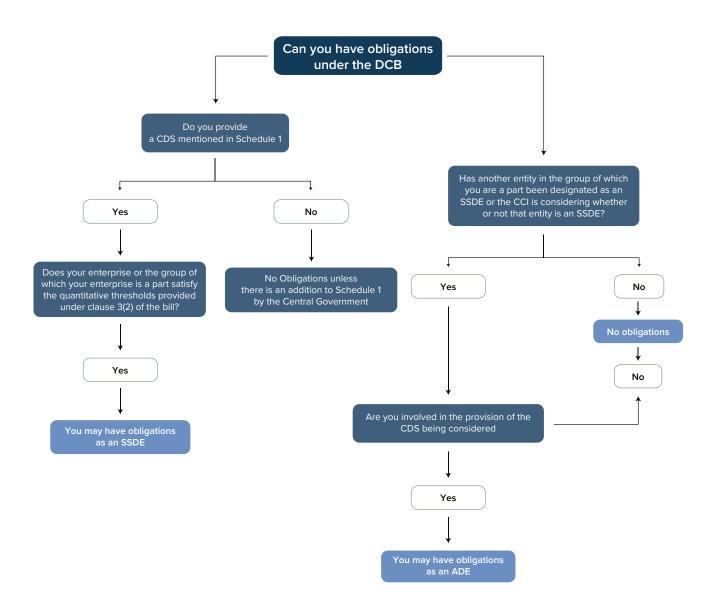


Figure 2: Flowchart on designation of enterprises

The Committee undertook a comparative analysis of international frameworks to identify parameters for designation. The Committee noted that most laws allowed for quantitative and qualitative factors to ensure swifter identification of entities. Therefore, the DCB stipulates both quantitative (objective indicators of significant presence) & qualitative criteria (subjective indicators of an entity's ability to influence the market) that will be considered by the Commission while designating an enterprise.

### 2.2.1. QUANTITATIVE CRITERIA FOR DESIGNATION

To designate SSDEs<sup>10</sup>, the Committee suggests a dual test approach which involves establishing that an enterprise has both 'significant financial strength' and 'significant spread'. The 'Significant financial strength' test seeks to showcase an entity's persistent financial strength and encompasses factors like turnover, gross merchandise value, and global market capitalisation, measured consistently over three financial years. The

'significant spread' test seeks to evaluate the extent of an entity's reach and involves metrics related to the number of business users and end users of the CDS in India, which is also measured consistently over three financial years.<sup>11</sup>

If the enterprise is part of a group of enterprises, then while calculating the values of "turnover in India", "global turnover", "gross merchandise value", "global market capitalisation, "number of end users", and "number of business users", the Commission will look at the whole group and not just one enterprise.<sup>12</sup>

The Committee reasons that some digital enterprises may have a large user base but lack the financial power to dominate competition. To prevent such enterprises from being included under the Draft DCB, objective criteria should consider the enterprise's overall strength, including its group entities' financial strength. Therefore, digital enterprises with a substantial user base in India and significant economic backing, individually or as part of a group, would be SSDEs.<sup>13</sup>

Significant Fina	Significant Financial Strength Test Significant Spread Test		Spread Test	
Parameter	Threshold		Parameter	Threshold
Turnover in India	≥ INR 4000 Crores			
OR		AND	End Users in India	≥1 crore users in India
Global Turnover	≥ USD 30 billion			
O	PR		O	R

<sup>&</sup>lt;sup>9.</sup> Page 99, Para 3.8, CDCL Report.

<sup>10.</sup> Page 154, Clause 3(2) of the Draft DCB.

<sup>&</sup>lt;sup>11</sup> Page 101, Para 3.13, CDCL Report.

<sup>12.</sup> Page 156, Clause 3 (7) of the Draft DCB.

<sup>&</sup>lt;sup>13.</sup> Page 101, Para 3.11, CDCL Report.

Gross Merchandise Value in India	≥ INR 16000 crore			
O	PR	AND	Business Users in India	≥ 10,000 users in India
Global Market Capitalisation or its equivalent fair value	≥ USD 75 billion			

**Table 1: Quantitative Criteria for Designation** 

The Committee deliberated on whether distinct quantitative thresholds should be established for each CDS, considering variations in financial strength and user base metrics across different markets. However, it acknowledged challenges in gathering data to set such thresholds for each service accurately. The Committee also reviewed EU, UK, and US models, where separate thresholds for different platform services were not specified. As a result, the Committee recommends that the Draft DCB introduce a consistent set of thresholds to identify SSDEs regardless of the CDS they offer, although obligations may vary.<sup>14</sup>

The Committee suggests reviewing the base values every three years to ensure adaptability to evolving market conditions. Furthermore, it recommends empowering the CCI to establish specific regulations outlining the process of determining and calculating user-based thresholds.<sup>15</sup>

<sup>&</sup>lt;sup>14.</sup> Page 105, Para 3.24, CDCL Report.

<sup>&</sup>lt;sup>15.</sup> Page 105, Para 3.25, CDCL Report / Also see Page 155, Clause 3 (4) of the Draft DCB.

<sup>&</sup>lt;sup>16</sup> Page 154, Clause 3 (3) of the Draft DCB.

### 2.2.2. QUALITATIVE CRITERIA FOR SSDE

The Commission can designate an enterprise as an SSDE for a particular online service, even if it doesn't meet the above-mentioned quantitative criteria. This designation can occur if the Commission determines that the enterprise has a significant presence in that CDS.<sup>16</sup> This decision is based on the Commission's information and the indicative factors mentioned below.

Volume of commerce	Size and resources of the enterprise	
Number of business users or end users	Economic power	
Market integration	Dependence of end users or business users	
Monopoly position obtained through statute, government affiliation, or otherwise	Barriers to entry	
Extent of user lock in and switching costs	Network effects and data driven advantages	
Scale and scope of the activities of the enterprise	Countervailing buying power	
Structural business or service characteristics	Social obligations and social costs	
Market structure and size of the market	Any other factor	

Table 2: Qualitative criteria for designation

<sup>&</sup>lt;sup>17</sup> Page 156, Clause 4 of the Draft DCB.

### 2.2.3. DESIGNATION PROCESS

The draft DCB prescribes the process for the potential SSDEs to self-notify the Commission in case they meet the thresholds provided under Clause 3.<sup>17</sup>

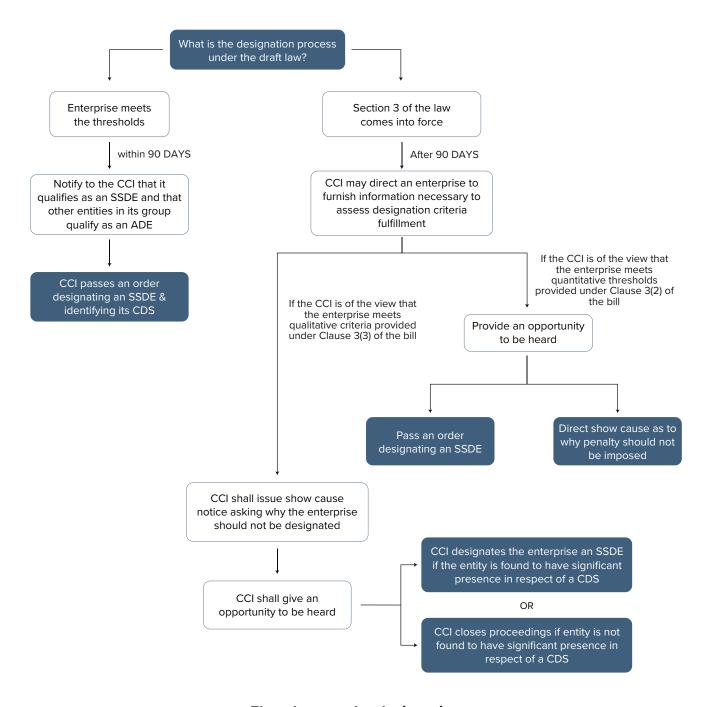


Figure 3: Flowchart on the designation process

### 2.3. OBLIGATIONS

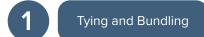
The Committee deliberated on the obligations of SSDEs by considering the ten ACPs identified in the PSC report. One of the ACPs identified by the PSC pertained to practices regarding mergers and acquisitions, which the Committee observed had been adequately addressed under the Competition (Amendment) Act, 2023. This recent amendment introduced significant changes, particularly in the establishment of 'Deal Value Thresholds', which stated that any combination exceeding a transaction value of INR 2000 crore necessitates ex-ante approval by the CCI. Therefore, by recognising the potential efficacy of this amendment in curbing anti-competitive M&As, the Committee deemed it advisable to exclude mergers & acquisitions from the formulation of ex-ante obligations within the framework of the Draft DCB.18

While recognising the varying degrees of anti-competitive effects among ACPs, the Committee noted that some practices may also yield pro-competitive benefits. Therefore, the Committee

recommended a principle-based framework wherein specific code requirements for each CDS will be outlined through regulations.<sup>19</sup> Additionally, while most obligations under the DCB are proposed to apply to Associate Digital Enterprises (ADEs), the CCI would have the authority to specify differentiated obligations to alleviate compliance burdens for ADEs. Furthermore, the Bill prohibits SSDEs from engaging in any behaviour that undermines compliance with these obligations.<sup>20</sup>

### 2.4. NATURE OF OBLIGATIONS

The DCB specifies certain obligations detailed below and mandates SSDEs to establish reporting and compliance mechanisms. SSDEs must report to the Commission about their steps to meet the obligations outlined in the bill and any associated rules and regulations. The Commission will specify the reporting format and frequency.<sup>21</sup>



SSDEs can't compel or incentivise users to use additional products or services unless essential for the CDS.

SSDE must treat end users and business users fairly, without discrimination, and with transparency.

Fair and transparent dealing

2

Self Preferencing

SSDE must not favor their own or related parties products over other CDS users, whether directly or indirectly.

SSDEs can't use business users' non-public data to compete or cross-use/share personal data without consent.

Data Usage

4

Restrict third-party apps

SSDEs must let users freely install third-party apps and change default settings.

SSDEs can't restrict businesses from communicating offers to their users, unless necessary for the platform's operation.

Anti-steering

6

List 2: Principle-based obligations under the draft law

<sup>&</sup>lt;sup>18.</sup> Page 109, Para 3.34, CDCL Report.

<sup>&</sup>lt;sup>19.</sup> Page 110, Para 3.38, CDCL Report.

<sup>&</sup>lt;sup>20.</sup> Page 161, Clause 8 (1) of the Draft DCB.

<sup>&</sup>lt;sup>21</sup> Page 161, Clause 9 of the Draft DCB

### 2.5. EXEMPTIONS

The Committee proposes two forms of exemptions: exemptions from obligations and exemptions by the central government. Exemptions from obligations can be availed by the SSDEs and ADEs on the basis of the following grounds:

- (a) Economic viability of operations;
- (b) Prevention of fraud;
- (c) Cybersecurity;
- (d) Prevention of unlawful infringement of pre-existing intellectual property rights;
- (e) Requirement of any other law in force; and
- (f) Such other factors as may be prescribed.<sup>22</sup>

However, the Committee acknowledges that obligations for SSDEs vary across different CDS, suggesting exemptions should not be fixed in the Draft DCB. Instead, they propose that the CCI could establish exemptions alongside regulations concerning obligations based on specific CDS and related business models.<sup>23</sup>

The Committee examined Section 54 of the Competition Act, which grants the Central Government powers to specify exemptions in the interest of security, public interest, treaty obligations, or sovereign functions. They proposed a similar overarching power for the Central Government to exempt enterprises from the Draft DCB. Additionally, the Committee discussed whether startups should be automatically exempted but decided against it due to the ambiguous criteria for startups and doubts about their classification under financial thresholds.

# 2.6. INQUIRY PROCESS

The inquiry process is similar to the one provided under the Competition Act, 2002. Under the DCB, the CCI takes cognisance of cases related to

non-compliance of obligations by SSDEs or ADEs either on its own initiative, i.e., suo motu or as a result of receiving certain information or through a reference made by the government. If the Commission is of the opinion that a prima facie case exists, it directs DG to conduct further investigation. However, if the CCI does not find a prima facie case, it will proceed to close down the matter. Provided that the Commission cannot investigate conduct if the same or substantially similar facts and issues have already been addressed in a previous order.<sup>27</sup>

Upon receiving direction for further investigation, the DG submits a report within a specified time. If the DG's report concludes no violation of the Act and the Commission agrees with the DG's recommendation, it closes the matter. If further investigation is deemed necessary after considering objections or suggestions from parties, the Commission may direct additional investigation by the DG, further inquiry, or proceed with its own inquiry. If the DG's report indicates a violation and further inquiry is warranted, the Commission investigates accordingly. After investigation, the Commission may close the matter, issue an order to cease conduct, impose penalties, modify the enterprise's behaviour as specified, or issue other appropriate directives.<sup>28</sup> The Bill also empowers the Commission to pass a similar order against other ADEs and SSDE's other group members.

### 2.7. SETTLEMENT AND COMMITMENTS

Enterprises under inquiry for contravening the Act may seek settlement by submitting an application to the Commission, following specified procedures. This application can be made after receiving the DG's report but before the Commission issues a final order. The Commission may accept the settlement proposal based on the gravity of the contraventions and other specified terms. If the Commission deems the proposed settlement inappropriate or if agreement isn't reached within a specified time, it rejects the application and continues with the inquiry.

<sup>&</sup>lt;sup>22.</sup> Page 160, Clause 7(5) of the Draft DCB.

<sup>&</sup>lt;sup>23.</sup> Page 111, Para 3.45, CDCL Report.

<sup>&</sup>lt;sup>24</sup> Page 112, Para 3.46, CDCL Report.

<sup>&</sup>lt;sup>25</sup> Page 182, Clause 38 of the Draft DCB.

<sup>&</sup>lt;sup>26.</sup> Page 112, Para 3.47, CDCL Report.

<sup>&</sup>lt;sup>27.</sup> Page 164, Clause 16 of the Draft DCB.

<sup>&</sup>lt;sup>28.</sup> Page 166, Clause 17 of the Draft DCB.

Orders issued by the Commission under this section are not appealable. The application for Commitments also follows a similar procedure. However, there are two fundamental differences. First, an offer for commitments can be made only after a prima facie order initiating an inquiry has been passed by the Commission but before the receipt by the party of the DG report.<sup>29</sup> Second, a proposal for settlement may also include a monetary amount, whereas the same may not be true for a commitment offer.<sup>30</sup>

# 2.8. Powers of DG and CCI

The DG and the CCI have powers similar to the ones conferred under the Competition Act, 2002 in respect of the power of the Commission to regulate its own procedure, look into reference by statutory authority or Commission, and power of DG to investigate contraventions. In addition, the DCB allows the Commission to call upon experts from fields of law.

technology and regulation, in addition to other specific fields, to conduct studies to assist in its functions.<sup>31</sup>

## 2.9. EXTRA TERRITORIALITY

Concerning acts taking place outside India,<sup>32</sup> the Commission possesses the authority to initiate an inquiry against an enterprise, even if it operates outside India or if any related matter arises outside India, for any non-compliance with the provisions of the Act or associated rules and regulations within India.

### 2.10. PENALTIES

Regarding violations of provisions outlined in the draft DCA by an enterprise, the table below provides a concise overview of the penalties imposed.

No.	Conduct	Quantum of Penalty/Punishment
1.	Failure to comply with an order to cease and desist/penalty/modify behaviour or interim order or an order in respect to extraterritorial conduct. <sup>33</sup>	Rupees one lakh for each day during which such non-compliance occurs, subject to a maximum of Rs. 10 crore.  Failure to pay the above amount can lead to imprisonment for a term which may extend to 3 years, or with a fine which may extend to Rs. 25 crore, or both. <sup>34</sup>
2.	Failure to comply with obligations under Chapter III and subsequent rules and regulations. <sup>35</sup>	Penalties not exceeding 10% of SSDE or ADE's global turnover in the preceding financial year where the Commission finds the contravention.

<sup>&</sup>lt;sup>29.</sup> Page 168, Clause 19(2) of the Draft DCB.[hereinafter "Consumer Protection (E-Commerce) Rules"].

<sup>&</sup>lt;sup>30.</sup> Page 167, Clause 18(3) and Page 168, Clause 19(3) of the Draft DCB.

<sup>31.</sup> Page 170, Clause 21(3) of the Draft DCB.

<sup>&</sup>lt;sup>32.</sup> Page 175, Clause 26 of the Draft DCB.

<sup>&</sup>lt;sup>33.</sup> Page 175, Clause 27 of the Draft DCB.

<sup>&</sup>lt;sup>34.</sup> Page 175, Clause 27(3) of the Draft DCB.

<sup>&</sup>lt;sup>35.</sup> Page 175, Clause 28(1) of the Draft DCB.

3.	An enterprise directly or indirectly segments, divide, subdivide, fragments or split services through contractual, commercial, technical or any other means in order to circumvent the designation thresholds. <sup>36</sup>	Penalties not exceeding 10% of SSDE or ADE's global turnover, in the preceding financial year where the Commission finds contravention.
4.	Failure to notify the Commission that the entity meets designation thresholds. <sup>37</sup>	Penalty not exceeding 1% of the global turnover.
5.	Failure to provide complete information or if the entity provides misleading/incorrect information. <sup>38</sup>	Penalty not exceeding 1% of the global turnover.
6.	If an SSDE or its ADE violates any provision of the Act or related regulations, every person responsible for its business conduct at the time of the violation is considered to have contravened the Act. <sup>39</sup>	Penalties on the individuals not exceeding 10% of the average income from the last 3 preceding FYs.
7.	If a violation by SSDE/ADE can be attributed to the consent, connivance, or neglect of any director, manager, secretary, or other officers of the company, such person may also become liable to pay a penalty. 40	Penalties may not exceed 10% of the average income from the last 3 preceding FYs.

**Table 3: Penalties under the Draft DCB** 

# 2.11. LIMITATION PERIOD

The DCB introduces a specific limitation period for initiating inquiries. It states that the Commission will not consider any information or reference from the central

government unless it is filed within *three years* from the date the cause of action occurred.

However, the Commission may still entertain information or reference after this period if it deems there was sufficient cause for not filing within the specified time, provided it records its reasons for condoning the delay. Hence, this provision ensures timely actions while allowing flexibility in certain circumstances where delays are justified.<sup>41</sup>

<sup>&</sup>lt;sup>36.</sup> Page 176, Clause 28 (2) of the Draft DCB.

<sup>&</sup>lt;sup>37.</sup> Page 176, Clause 28 (3) of the Draft DCB.

<sup>38.</sup> Page 176, Clause 28 (4) of the Draft DCB.

<sup>&</sup>lt;sup>39.</sup> Page 177, Clause 29 (1) of the Draft DCB.

<sup>&</sup>lt;sup>40</sup> Page 177, Clause 29 (3) of the Draft DCB.

<sup>&</sup>lt;sup>41.</sup> Page 178, Clause 30 of the Draft DCB.

# 2.12. EXECUTION OF ORDERS

When discussing the execution of orders imposing monetary penalties, the DCB outlines the process for recovering monetary penalties imposed under the Act. If an enterprise or individual fails to pay the penalty, the Commission will take steps to recover it as specified. If the Commission deems it appropriate, it may refer the matter to the income-tax authority for recovery under the Income Tax Act, 1961. In such cases, the person owing the penalty is treated as a defaulter under the Income Tax Act, and relevant provisions of that Act apply as if they referred to penalties under this Act.<sup>42</sup>

## 2.13. OTHER KEY PARTS

All sums realised by way of penalties, settlement, and recovery of legal costs by the Commission are to be credited to the Consolidated Fund of India.<sup>43</sup> The Commission has the power to pass an order to rectify mistakes apparent from the record.<sup>44</sup> Information obtained by or on behalf of the Commission or the Appellate Tribunal for the purposes of the Act cannot be disclosed without prior written permission from the concerned enterprise or person.

Disclosure is allowed only in accordance with the Act or any other prevailing law.<sup>45</sup> The provisions of this Act take precedence over any conflicting provisions in

other existing laws.<sup>46</sup> The law is supplementary to and does not diminish the provisions of any other existing laws.<sup>47</sup> Civil courts cannot hear suits or proceedings related to matters within the jurisdiction of the Commission or the Appellate Tribunal under this Act. Additionally, no injunction can be granted by any court or authority regarding actions taken or to be taken under this Act.<sup>48</sup>

### 2.14. APPELLATE PROCESS<sup>49</sup>

The DCB establishes procedures for appeals and the powers of the Appellate Tribunal. The National Company Law Appellate Tribunal (NCLAT) is designated as the appellate authority for matters related to the bill. Appeals can be made against directions, decisions, or orders issued by the CCI, covering various sections of the Act. Any aggrieved party must file an appeal within sixty days of receiving the Commission's decision, accompanied by a prescribed fee. The NCLAT may consider appeals filed after this period if sufficient cause exists. Additionally, any person required to pay a penalty must deposit twenty-five per cent of the amount before their appeal is heard.

The NCLAT has the authority to confirm, modify, or set aside the original decision after hearing both parties. It must send a copy of its order to the CCI and the involved parties. Appeals are to be expedited, ideally resolved within six months. Furthermore, an appeal to the *Supreme Court* can be filed within sixty days of the communication of the decision or order of the Appellate Tribunal.

<sup>&</sup>lt;sup>42.</sup> Page 179, Clause 33 of the Draft DCB.

<sup>&</sup>lt;sup>43.</sup> Page 178, Clause 31 of the Draft DCB.

<sup>&</sup>lt;sup>44.</sup> Page 178, Clause 32 of the Draft DCB.

<sup>&</sup>lt;sup>45.</sup> Page 184, Clause 41 of the Draft DCB.

<sup>&</sup>lt;sup>46.</sup> Page 185, Clause 44 of the Draft DCB.

 $<sup>^{\</sup>it 47.}$  Page 185, Clause 45 of the Draft DCB.

<sup>&</sup>lt;sup>48.</sup> Page 185, Clause 46 of the Draft DCB.

<sup>&</sup>lt;sup>49.</sup> Page 180, Clause 34 of the Draft DCB.

## 2.15. POWERS OF CENTRAL GOVERNMENT

The Central Government has been given the following powers under the draft DCB:

#### **Exempt enterprises**

Exempt an enterprise if it's in the interest of state security, public interest, treaty obligations, or for sovereign function.

#### **Issue Directions**

Issue directions on questions or policy for the Commission.

#### Supersede CCI

Supersede CCI for up to six months if it believes there are uncontrollable circumstances, persistent non-compliance with its directions, or necessary in the public interest.

#### Seek recommendation

Ask the Commission to recommend adding or removing services from the list of Core Digital Services.

#### Make Rules

Make rules to carry out the provisions of the DCB. For example: rules for calculation of

#### Notify/Amend Schedules

By amendment, notify new services, or alter or delete services in Schedule I.

**List 3: Powers of Central Government under DCB** 

<sup>&</sup>lt;sup>60.</sup> Page 186, Clause 49 of the Draft DCB.

# 2.16. REGULATION MAKING POWER<sup>50</sup>

The DCB states the process for making regulations and outlines specific powers in this regard. The Commission, through notifications, can create

regulations consistent with the DCB and its associated rules to implement the Act effectively. These regulations will cover various aspects such as calculating turnovers, defining criteria for SSDEs, establishing complaint-handling mechanisms, reporting measures, defining consent for business users, and outlining penalties. A list of purposes for which the CCI may create regulations is provided below:

Manner of calculating quantitative thresholds

Manner of calculating number of users

Form and manner of furnishing information on SSDE criteria fulfillment

Form and manner of application that an enterprise no longer fulfills SSDE criteria

Separate conduct requirements for each CDS

Differential obligations for ADEs

Form and manner of reporting measures undertaken by an enterprise

Meaning of the term consent for business users

Restrictions considered integral to comply with anti-steering obligations

Restrictions considered integral to comply with tying and bundling obligations

Time period for submission of DG report

Other details to be indicated in show-cause notice

Form of application, terms etc. pertaining to settlements

Form of application, terms etc. pertaining to commitments

Details to be published with regulations and period for inviting comments

Manner in which penalty shall be recovered

Form and manner of notification of SSDE criteria fulfillment

Manner and fee for receipt of information

Form and manner of application for revocation of designation

Manner, form and time period relevant for providing description of measures taken

Manner of establishing complaint handling and compliance mechanisms

Manner of calculating global turnover and income

Manner of allowing users to port data

Any other matter in respect of which provisions is to be made by regulations

List 4: Regulation making powers of the CCI

Additionally, regulations can be tailored to specific circumstances, considering factors like the nature of digital services and industry standards. Furthermore, the Commission must ensure transparency by publishing draft regulations, inviting public comments, and reviewing regulations periodically. However, in urgent situations or matters pertaining solely to the CCl's internal functioning, regulations can be expedited without following the usual process, provided reasons are recorded. Finally, all regulations must be presented to Parliament for review and approval, ensuring accountability and democratic oversight.

### 2.17. GUIDELINE ISSUING POWER

Regarding the powers to issue guidelines, as stated in the DCB, the Commission holds the authority to release guidelines concerning the provisions of the Act or associated rules and regulations, either upon request or at its discretion. These guidelines, while informative, do not constitute conclusive determinations of fact or law by the Commission or its members and officers, and they are not binding. Additionally, the Commission is mandated to publish quidelines regarding the appropriate penalties for any contravention of the Act. When imposing penalties for such contraventions, the Commission must consider these guidelines and provide reasons for deviation from them. These guidelines are to be published in a prescribed format for clarity and accessibility.51

<sup>&</sup>lt;sup>51.</sup> Page 189, Clause 50 of the Draft DCB.

### **A**UTHORS



### AMAN MISHRA SENIOR RESEARCH ASSOCIATE

Aman Mishra is a Senior Research Associate at The Dialogue. He has completed his B.B.A. LL.B. from Bharati Vidyapeeth, Pune. Previously he gained valuable experience at a boutique law firm, where he actively engaged in addressing antitrust issues pertaining to cartels and abuse of dominance. Following that, he transitioned to the competition law & policy space by joining CUTS Institute for Regulation.



### **BHOOMIKA AGARWAL**

SENIOR RESEARCH ASSOCIATE

Bhoomika completed her B.A.LLB (H) from Guru Gobind Singh Indraprastha University and has several publications and paper presentations to her name. She has done internships with several reputed organizations where she worked on a project to make internet space safer for women and other communities. Her focus areas include technology policy and competition law.

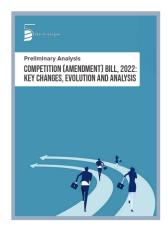


### **SAKSHAM MALIK**

SENIOR PROGRAMME MANAGER - COMPETITION LAW AND POLICY

Saksham Malik graduated from Rajiv Gandhi National University of Law, Punjab in 2020 following which he worked in the antitrust law team of a tiered law firm. His work in the policy sphere revolves around interdisciplinary research in the areas of competition, technology, and human rights law and policy. He is focused on employing tools of policy-making, legal aid, advocacy, and capacity-building to advance the cause of social justice.

### More from Our Research



#### Preliminary Analysis

Competition (Amendment) Bill, 2022: Key Changes, Evolution and Analysis



#### Event Report

Digital Competition Dialogues

– Stakeholder Consultation on
Draft Digital Competition Bill
and the CDCL Report: Expert
Opinion



#### Primer

53rd Report of The Standing Committee on Finance and A Potential Ex-Ante Competition Law Regime



#### Written Comments

Written Comments: Draft Competition Commission of India (Lesser Penalty) Regulations, 2023



#### Analysis

Parliamentary Committee on Finance's 52nd Report on Competition (Amendment) Bill 2022



#### Event Report

Future of Competition Policy in Digital Markets



#### Working Paper

Working Paper: Digital Markets and Gaps in the Indian Competition Regime





@\_DialogueIndia



@TheDialogue\_Official



@The-Dialogue-India



@TheDialogueIndia