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ABUSE OF DOMINANT POSITION BY E-COMMERCE PLATFORMS IN INDIA

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I. ABSTRACT

E-commerce has transformed the purchase and sale of goods and services in India. Online marketplaces give small sellers access to markets that were previously closed to them, lower the cost of product discovery for consumers and give consumers access to thousands of sellers. The same marketplaces, however, can exercise considerable power over the sellers that depend on them. This paper examines how effectively section 4 of the Competition Act, 2002 can prevent and remedy the abuse of market power by e-commerce marketplaces in India. Using a doctrinal method, supplemented by a comparative study of developments in the European Union, Italy and the United States, it analyses the statute, the orders of the Competition Commission of India (CCI) and the decisions of the appellate tribunal and the courts. It addresses the definition of relevant markets, the assessment of dominance and the conduct that raises competition concerns, namely discriminatory treatment, exclusive dealing, predatory pricing, price parity clauses, the use of sellers' commercially sensitive data and self-preferencing. The paper finds that section 4 is a flexible provision that can be, and has been, applied to various forms of abuse in digital markets, but that multi-sided business models, network effects, data advantages, difficulties in market definition and protracted investigations complicate its enforcement. It argues that the law must distinguish vigorous competition, including price reductions that benefit consumers, from conduct that entrenches dominance and undermines the competitive process. The paper advocates clearer regulatory guidance, faster investigations, timely interim relief and greater technical expertise within the CCI, so that enforcement secures fair access for smaller sellers without restricting innovation or legitimate price competition.

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II. KEYWORDS

Abuse of Dominant Position, E-commerce Platforms, Competition Act 2002, Digital Markets, Competition Commission of India.

III. INTRODUCTION

E-commerce in India now operates through an extensive commercial network. A single online interface allows customers to compare products and reviews, make payment and arrange delivery. This model enables small manufacturers and retailers to sell directly to customers in remote areas without investing in a costly distribution network.[1] A marketplace, however, is more than a virtual meeting point for buyers and sellers. It also sets the terms of participation, determines the ranking of search results, tracks transactions, offers advertising and delivery services, and may enter into special commercial arrangements with a few selected sellers or brands. These functions can create a conflict of interest.

A platform that observes a seller's prices, sales volumes, products, demand and inventory holds information that the seller cannot match, while the seller depends on the platform for access to customers. Where the platform excludes certain sellers, competes against them using non-public information or imposes unreasonable conditions, the harm extends beyond a commercial dispute between private parties. Section 4(1) of the Competition Act, 2002 provides that '[n]o enterprise or group shall abuse its dominant position'.

Section 4(2) lists the conduct that amounts to such abuse: imposing unfair or discriminatory conditions or prices, including predatory prices; limiting or restricting production, markets or technical development; denying market access; making contracts subject to supplementary obligations unconnected with their subject; and using dominance in one relevant market to enter into or protect another.[2] Section 4

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[1] Competition Commission of India, *Market Study on E-Commerce in India: Key Findings and Observations* (8 January 2020) <https://www.cci.gov.in/sites/default/files/whats_newdocument/Market-study-on-e-Commerce-in-India.pdf>.

[2] Competition Act, 2002 (Act 12 of 2003), s 4(1) and (2).

therefore does not prohibit an enterprise from becoming large, powerful or commercially influential. The question is not whether Amazon, Flipkart or any other platform is large, but whether a platform holds a dominant position in a properly defined relevant market and whether its conduct is abusive under section 4. This distinction frames the research problem. The paper contends that section 4 is adequate in principle, but that its enforcement against dominant e-commerce platforms is hampered by the difficulty of defining multi-sided markets, the information asymmetry between platforms and the regulator, and the length of investigations relative to the pace of change in digital markets.

A. Research Objectives

1. To examine the scope and adequacy of section 4 of the Competition Act, 2002 in regulating the conduct of dominant e-commerce platforms in India (Research Question 1).
2. To analyse how market share, network effects, the dependence of consumers and sellers, and access to commercial data bear on the assessment of dominance under sections 4 and 19(4) of the Act (Research Question 2).
3. To evaluate the competitive effects of self-preferencing, predatory pricing, exclusive dealing, price parity clauses and discriminatory treatment of sellers, and to identify the procedural and evidentiary obstacles that the CCI faces in addressing them (Research Questions 3 and 4).
4. To assess whether statutory or institutional reform, including an ex ante framework of the kind proposed in the draft Digital Competition Bill, 2024, is needed to secure fair competition between platforms and the sellers and consumers who use them (Research Question 5).

B. Research Methodology

This study is doctrinal. Its primary sources are the Competition Act, 2002, as amended by the Competition (Amendment) Act, 2023; the regulations framed under the Act;

the orders of the CCI; and the decisions of the National Company Law Appellate Tribunal (NCLAT), the High Courts and the Supreme Court.

Its secondary sources are the CCI's Market Study on E-Commerce in India (2020), the reports of the Competition Law Review Committee (2019), the Committee on Digital Competition Law (2024) and the Standing Committee on Finance (2025), and academic and professional commentary. The study also has a comparative element. It examines the European Commission's commitments decision concerning Amazon, the decision of the Italian competition authority on Amazon's logistics services and the monopolisation proceedings against Amazon in the United States, in order to draw lessons for India rather than models for transplantation. The law is stated as on 15 November 2026.

C. Research Questions

1. To what extent does section 4 of the Competition Act, 2002 restrain and regulate the conduct of dominant e-commerce platforms in India?
2. What role do market share, network effects, the dependence of consumers and sellers, and access to commercially significant data play in the CCI's assessment of whether an e-commerce platform holds a dominant position?
3. How do self-preferencing, predatory pricing, exclusive dealing and discriminatory treatment of sellers affect competition in India's e-commerce markets under section 4?
4. What are the principal procedural and evidentiary obstacles that the CCI faces in investigating and remedying abuse of dominance by e-commerce platforms?
5. Does the Competition Act, 2002 require amendment, supplementation by an ex ante framework of the kind proposed in the draft Digital Competition Bill, 2024, or institutional reform of the CCI, to secure fair competition between platforms and the sellers and consumers who use them?

IV. DETERMINATION OF DOMINANCE IN DIGITAL MARKETS

The definition of relevant market and determination of dominance in section 4 of the Act would have to be read with the provisions of the Competition Act, 2002. Under the Act, a dominant position means a position of strength... in India in the relevant market which enables it to operate independently of competitive forces prevailing in the relevant market or affect its competitors or consumers or the relevant market in its favor.[3] The first thing that CCI has to do is to define the relevant market. It usually requires determining the relevant geographic and product market.[4] Defining the product market is particularly complicated in e-commerce cases because competition boundaries often are not obvious.

For instance, a customer might want to purchase a mobile phone and compare the price on the high street and on the Internet. However, it can be a rather different yardstick for the situation of such a small seller. A customer review platform, customers, and delivery services can be an advantage to such a seller. These digital platforms are therefore called such "multi-sided" "markets." They connect two or more sides (e.g. sellers and buyers) that have common interests. More sellers can attract more buyers, and vice versa.[5] Thus, prices may not be a good indicator of competition in these markets.

For example, a platform may profit from sellers or advertising while providing free services to users, subsidizing delivery, or offering cash-back incentives. Just because a service is free does not mean it is not an economic value. In other words, the provision of a free service does not remove the platform from the purview of the competition law. Section 19(4) of the Act lists the factors to which the CCI shall have due regard in inquiring whether an enterprise enjoys a dominant position. These are the market share of the enterprise; its size and resources; the size and importance of its competitors; its economic power, including commercial advantages over

[3] Competition Act, 2002, s 4, Explanation (a).
[4] Competition Act, 2002, ss 2(r)–(t) and 19(5)–(7).
[5] See Jean-Charles Rochet and Jean Tirole, 'Platform Competition in Two-Sided Markets' (2003) 1 Journal of the European Economic Association 990; *Ohio v American Express Co* 585 US 529 (2018).

competitors; vertical integration or its sale or service network; the dependence of consumers on the enterprise; a monopoly or dominant position acquired by statute, by virtue of being a Government company or public sector undertaking, or otherwise; entry barriers; countervailing buying power; market structure and size of market; social obligations and social costs; relative advantage by way of contribution to economic development; and any other factor that the Commission considers relevant.[6]

For e-commerce platforms, the most significant of these are market share, the dependence of consumers (a term that, under section 2(f), includes sellers that avail of marketplace services for commercial purposes), entry barriers reinforced by network effects, vertical integration into retail, logistics or payments, and the economic power that control over customer traffic confers. Data is equally important in analyzing competition in the digital market. Digital platforms as such collect vast amounts of information concerning users' searches, search results, site choices, decisions to wait or pay, return of products, price elasticity of demand as well as other private preferences.

This may improve their general services and their recommendation and delivery systems. At the same time, it can provide them with a competitive edge over which smaller sellers can hardly compete.[7] However, not all data is equal in terms of dominancy. One has to assess the market and the competitive advantage it creates. The second issue is group dominance. Section 4 applies to an enterprise or a group,[8] but the CCI has held that the Act does not contemplate ascertaining dominance by reference to the collective dominance of two or more independent enterprises in a concentrated market.[9]

This may result in a vacuum in law where a group of online platforms may collectively possess a significant market share but may not individually meet the tests of

[6] Competition Act, 2002, s 19(4)(a)–(m); see also s 2(f) (definition of 'consumer').
[7] See CCI, *Market Study on E-Commerce in India* (n 2).
[8] Competition Act, 2002, s 4, Explanation (c), read with Explanation (b) to s 5.
[9] *Delhi Vyapar Mahasangh v Flipkart Internet Pvt Ltd*, CCI Case No 40 of 2019 (order under s 26(1), 13 January 2020) <https://www.cci.gov.in/sites/default/files/40-of-2019.pdf>.

dominance under the law. It is in this regard that Section 4 may not be too effective in addressing certain kinds of market concentration.

The Supreme Court's decision in *Coal India Ltd v Competition Commission of India* supplies the governing approach.[10] The Court emphasised that section 4 prohibits the abuse of a dominant position and not its possession, that the relevant market is determined by reference to the relevant product market, the relevant geographic market or both, and that the CCI must consider the section 19(4) factors, to all or any of which it may have due regard in a given case.

Applied to multi-sided marketplaces, this approach requires the CCI to define the market for the intermediation service that the platform supplies to sellers and buyers, and to test dominance through the factors that capture platform power, such as seller dependence, entry barriers and vertical integration, rather than through market share alone. The test now has direct practical significance. On 3 February 2026, the Supreme Court remanded the AIOVA appeal concerning Flipkart, discussed in Part 8, and requested the NCLAT to decide afresh, in light of the principles stated in *Coal India* and other decisions, whether a prima facie case for investigation is made out.[11]

Section 4(1) of the Act provides that '[n]o enterprise or group shall abuse its dominant position', and section 4(2) enumerates the conduct that amounts to abuse.[12] The statutory term is 'abuse'. 'Exploitative' conduct, which harms consumers or trading partners directly, is a descriptive economic category within abuse, alongside 'exclusionary' conduct, which forecloses competitors; it does not replace the statutory term. The provision deals with the conduct of an enterprise or group that has already achieved dominance in the relevant market.

Thus, the presence of dominance is a prerequisite for establishing an infringement under Section 4. Hence, the abusive conduct of a dominant platform can be penalized but not that of a non-dominant platform under this provision. The Competition

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[10] *Coal India Ltd v Competition Commission of India* (2023) 10 SCC 345, 2023 INSC 580, paras 84, 86 and 92.
[11] *Flipkart India Pvt Ltd v CCI*, Civil Appeal No 2770 of 2020 (SC, 3 February 2026).
[12] Competition Act, 2002, s 4(2)(a)–(e).

(Amendment) Act, 2023 made two distinct changes relevant here. First, it amended the Explanation to section 4(2)(a) by substituting the words 'condition or price' for 'discriminatory condition or price', so that the meeting-competition defence now extends to any unfair or discriminatory condition or price adopted to meet the competition.[13]

The amendment thus recognises that conduct otherwise prohibited may be justified where it is a genuine response to competition. Second, it separately inserted sections 48A and 48B, which provide for settlement and commitment; these are standalone procedures and do not form part of section 4(2)(a). Under section 26(1), the CCI can record its prima facie opinion of contravention of the Act and direct the Director General to cause an investigation to be conducted. After granting the parties an opportunity of hearing, the Commission can pass such orders as it may deem fit under the Act, including an order to discontinue the abusive conduct and to pay a penalty. The Act also empowers the Commission to grant interim relief where an immediate remedy is needed.[14]

The settlement and commitment procedures, operationalised by the Settlement and Commitment Regulations of 2024, are available in specified cases.[15] Such mechanisms can be useful to address competition concerns without subjecting the parties to fully contested proceedings. This is especially true for digital-native markets, where business practices and market conditions can change rapidly. However, they are only as good as the commitments offered to remedy the underlying competition concerns, as effective as CCI's monitoring of these commitments, and as transparent as the process. In the lack of strong commitments and monitoring, such tools may not resolve the competition concerns in digital markets.

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[13] Competition (Amendment) Act, 2023 (Act 9 of 2023), s 5.
[14] Competition Act, 2002, ss 26(1), 27 and 33.
[15] Competition Act, 2002, ss 48A and 48B, inserted by the Competition (Amendment) Act, 2023 (n 14); Competition Commission of India (Settlement) Regulations, 2024; Competition Commission of India (Commitment) Regulations, 2024.

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V. COMPETITION AND ANTI-COMPETITIVE COMMERCIAL PRACTICES

A. Harmful practices and self-preferencing

Self-preferencing: a platform favors its own products and services or sellers that it has itself selected, to the disadvantage of other businesses active on the platform. Such preferential treatment can pertain to search ranking, conspicuous display of products, participation in promotional campaigns, conditions of commissions, delivery assistance or advertising tools.[16] However, not all ranking decisions are discriminatory. Platforms will have to employ some criteria for ranking search results, and relevance, price, speed of delivery, consumer reviews and at least quality are criteria that will be acceptable. However, if the criteria are applied inconsistently, or if the lack of preference or preference in visibility confers a competitive advantage to some sellers not justified by the quality, price or customer service, this can raise competition concerns.

The CCI's principal decision on a dominant platform favouring its own services is *Matrimony.com Ltd v Google LLC*.[17] By a majority of 4:2, the Commission held Google dominant in the markets for online general web search and web search advertising services in India. It found that Google had abused that position by ranking its Universal Results at pre-determined positions rather than by relevance before 2010, and by prominently displaying its Commercial Flight Unit with a link to its own flight search page; it treated both practices as unfair impositions on users under section 4(2)(a)(i).

It further held that restrictive clauses in Google's negotiated search intermediation agreements imposed unfair conditions on publishers, strengthened Google's position in online syndicate search and denied competitors access to that market, in

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[16] See CCI, *Market Study on E-Commerce in India* (n 2); *Delhi Vyapar Mahasangh* (n 10).

[17] *Matrimony.com Ltd v Google LLC*, CCI Case Nos 07 and 30 of 2012 (majority order of 31 January 2018; dissent of 8 February 2018) para 420; on the pending appeal, see Carnegie India, 'Assessing the Need for a New Draft Digital Competition Bill in the Indian Context' (February 2025) <https://carnegieendowment.org/research/2025/02/assessing-the-need-for-a-new-draft-digital-competition-bill-in-the-indian-context>.

contravention of sections 4(2)(a)(i), 4(2)(e) and 4(2)(c). The Commission imposed a penalty of INR 135.86 crore. Google appealed to the NCLAT, which stayed part of the order in April 2018, and the appeal was reported to be pending in 2025. The decision supports the argument that platforms may apply legitimate ranking criteria. The Commission did not condemn Google's specialised search design as such and, for the flight unit, required only a disclaimer. It condemned departures from relevance and the undisclosed diversion of users, which confirms that the decisive question is whether a dominant platform applies its ranking criteria consistently and transparently.

B. Deep discounting and predatory pricing

Deep discounts are common in online retail and can be tempting to the consumer. These may be attributed to one or a combination of a few of the following: competition among the sellers, manufacturer promotion, bank discounts, and platform subsidies. Predatory pricing, however, is a narrow concept. Explanation (b) to section 4 defines a 'predatory price' as the sale of goods or provision of services at a price below the cost of production, as determined by regulations, with a view to reduce competition or eliminate the competitors.[18]

The Competition Commission of India (Determination of Cost of Production) Regulations, 2025, which replaced the 2009 Regulations on 6 May 2025, generally take cost as average variable cost, as a proxy for marginal cost. For reasons recorded in writing, however, the Commission may apply average total cost, average avoidable cost or long run average incremental cost, depending on the nature of the industry, market and technology. The choice of benchmark matters in platform cases. Where a platform funds discounts or subsidises delivery, average variable cost may understate the cost base of a business with high fixed and sunk costs, and average total cost or long run average incremental cost may better reveal whether sustained deep discounting is below cost. Therefore, analysis must distinguish between a genuine

[18] Competition Act, 2002, s 4, Explanation (b); Competition Commission of India (Determination of Cost of Production) Regulations, 2025 (No 02 of 2025, notified 6 May 2025).

promotional strategy and a persistent predation activity. Here the questions that should be posed are: is the platform dominant, are the prices below the relevant measure of cost and likely to foreclose equally efficient competitors, and is there evidence of exclusionary objective or effect?

C. Bundling and exclusive dealing arrangements

For example, a brand may introduce a product into a given market for a period, or a seller may agree to buy some services. In some instances, exclusivity encourages investment, product releases, and effective distribution. But it can also exclude rival platforms from essential products or competitors from customers.[19] Tying: Tying involves conditioning access to one product or service on the purchase of a separate second product or service. For instance, a platform might require the use of its advertising or logistics services to be able to be visible on the platform. Such conduct will or may be abusive depending on the position of the platform, the nature of the 'condition', the relationship of the services and the effect on competition.[20]

D. Price parity agreements

A price-parity clause prevents a seller from offering a better price or availability through another sales channel. A wide parity clause covers all other channels, including competing platforms and the seller's own website, while a narrow parity clause restricts only the terms that the seller offers through its own direct channel. A platform may argue that such a clause protects its investment in bringing consumers to the platform, since a consumer may discover a product on the platform and buy it elsewhere. This free-riding argument is stronger for narrow parity than for wide parity, which suppresses price competition between platforms.

The CCI's decision concerning MakeMyTrip-Goibibo (MMT-Go) and OYO addresses delisting, parity, market definition and online intermediation.[21] The Commission found that MMT-Go had abused its dominant position in contravention of sections

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[19] See *Delhi Vyapar Mahasangh* (n 10); CCI, *Market Study on E-Commerce in India* (n 2).
[20] Competition Act, 2002, s 4(2)(d) and (e).
[21] *Federation of Hotel & Restaurant Associations of India v MakeMyTrip India Pvt Ltd*, CCI Case Nos 14 of 2019 and 1 of 2020 (19 October 2022) <https://www.cci.gov.in/antitrust/orders/details/1069/0>.

4(2)(a)(i) and 4(2)(c), and that the arrangement between MMT-Go and OYO contravened section 3(4)(d) read with section 3(1). It directed MMT-Go to abandon price and room-availability parity obligations and imposed penalties of INR 223.48 crore on MMT-Go and INR 168.88 crore on OYO.

The parity obligations at issue restrained hotels from offering better terms on other channels and therefore operated as wide parity; the order does not decide whether narrow parity would attract the same treatment. The order remains under challenge. The NCLAT admitted the appeals subject to a pre-deposit of ten per cent of the penalties, and the Delhi High Court stayed recovery of the balance from MMT-Go on that deposit.[22] As no final appellate decision had been reported by the cut-off date of this paper, the order shows that the existing framework can reach digital intermediation, but it does not yet establish that the framework is sufficient.

E. Use of seller data

A marketplace may get to know non-public information about other sellers (e.g. sales performance and conversion rates, demand for different products, pricing, inventory, consumer behavior). That begs the question of whether there is fairness in the platform wearing two hats and using that information to compete with those sellers that provided the information. But not all data use is abusive. Platforms need data to improve our service, to predict demand, to prevent fraud. Competition question: Is the non-public information allowing the platform to unfairly exclude competitors or cement market power?[23]

VI. CHALLENGES IN ENFORCEMENT

A key primer is the CCI's 2020 market study of e-commerce in India. It covered consumer-goods marketplaces and platforms for accommodation and food services.

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[22] *Oravel Stays Ltd v CCI*, Competition Appeal (AT) No 55 of 2022 (NCLAT, order of 22 November 2022); *Make My Trip (India) Pvt Ltd v CCI*, Competition Appeal (AT) No 57 of 2022 (NCLAT, order of 6 December 2022); *MakeMyTrip India Pvt Ltd v CCI*, WP(C) 16963/2022 (Del HC, 14 December 2022).
[23] European Commission, Cases AT.40462 *Amazon Marketplace* and AT.40703 *Amazon Buy Box*, Commission Decision C(2022) 9442 final of 20 December 2022 (commitments decision under art 9 of Regulation 1/2003).

It obtained data on platforms and on vendors and service providers and on payment-system actors. It found concerns over platform neutrality, search ranking, exclusivity agreements, deep discounting, price-parity clauses, review and rating systems and data usage.[24] Complaints against online marketplaces under section 4 have also proved difficult to investigate. In 2018, the CCI closed the All India Online Vendors Association (AIOVA) complaint against Flipkart at the prima facie stage on the ground that Flipkart was not shown to be dominant.

The NCLAT set aside that closure in March 2020 and directed an investigation, but the Supreme Court stayed its order and, on 3 February 2026, set it aside and remanded the appeal, because the NCLAT had relied on observations of an income-tax Assessing Officer that the Income Tax Appellate Tribunal had since set aside. All issues remain open before the NCLAT.[25] On information filed by the Delhi Vyapar Mahasangh, the CCI in January 2020 directed an investigation into Amazon and Flipkart for alleged anti-competitive vertical arrangements, while declining to assess collective dominance under section 4.

The Karnataka High Court stayed the investigation in February 2020, but a single judge dismissed the writ petitions of Amazon and Flipkart on 11 June 2021, holding that an order under section 26(1) is administrative in nature, and a Division Bench dismissed their appeals on 23 July 2021.[26] On 9 August 2021, the Supreme Court declined to interfere.[27] In September 2024, Reuters reported that the Director General's investigation reports had found that Amazon and Flipkart favoured select sellers;

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[24] CCI, *Market Study on E-Commerce in India* (n 2).
[25] *All India Online Vendors Association v Flipkart India Pvt Ltd*, CCI Case No 20 of 2018 (order under s 26(2), 6 November 2018); *All India Online Vendors Association v CCI*, Competition Appeal (AT) No 16 of 2019 (NCLAT, 4 March 2020); *Flipkart India Pvt Ltd v CCI* (n 12) (orders of 2 December 2020 and 3 February 2026).
[26] *Delhi Vyapar Mahasangh* (n 10); *Amazon Seller Services Pvt Ltd v CCI*, WP No 3363 of 2020, with *Flipkart Internet Pvt Ltd v CCI*, WP No 4334 of 2020 (Kar HC, 11 June 2021), applying *CCI v Steel Authority of India Ltd* (2010) 10 SCC 744 and *CCI v Bharti Airtel Ltd* (2019) 2 SCC 521; *Flipkart Internet Pvt Ltd v CCI*, WA No 562 of 2021, with *Amazon Seller Services Pvt Ltd v CCI*, WA No 563 of 2021 (Kar HC, 23 July 2021).
[27] *Flipkart Internet Pvt Ltd v CCI*, SLP (C) No 11558 of 2021, with *Amazon Seller Services Pvt Ltd v CCI*, SLP (C) No 11615 of 2021 (SC, 9 August 2021).

these reports are findings of the investigation and not a final decision of the Commission.[28]

There are several problems with the proceedings. First, there is disagreement on market definition. Platforms may compete with offline retail or other online venues, while complainants may emphasize the importance of a given platform for sellers or a product category. Second, the platforms may possess information that is not available to the sellers or to the regulators. Such information may include data on ranking, commission, traffic, discounts, relationships with sellers and changes in algorithms, and the CCI may find itself dependent on the platforms' own data. Thirdly, proceedings may drag on.

Business practices, consumer habits and technologies change quickly in digital markets. A harmful practice now may change by the time a final order is made or an entrenched position may be more difficult to roll back because of network effects. Fourth, sellers' and consumers' interests are not always aligned. A seller may not be prone to discounts for the interests of the consumers in a short term. Competition law protects competition, not competitors per se from the effects of vigorous competition.[29] Finally, the boundaries between competition law, foreign investment policy and consumer protection, and between the legal duties of the various authorities, may be unclear.

VII. COMPARISON WITH DEVELOPED COUNTRIES

International developments offer useful lessons but cannot be mechanically transplanted into Indian law. The European Commission has accepted commitments from Amazon concerning its use of non-public seller data and its treatment of sellers in the Buy Box and the Prime programme.[30] In the United States, the Federal Trade Commission and a group of States have sued Amazon alleging unlawful

[28] Aditya Kalra, 'India probe finds Amazon, Walmart's Flipkart breached antitrust laws' (*Reuters*, 12 September 2024) <https://www.reuters.com/world/india/india-probe-finds-amazon-walmarts-flipkart-breached-antitrust-laws-2024-09-12/>.
[29] *Brown Shoe Co v United States* 370 US 294, 320 (1962).
[30] *Amazon Marketplace* and *Amazon Buy Box* (n 24).

monopolisation, including conduct affecting sellers on its marketplace. In 2024 the court allowed the federal claims to proceed, and the case is now listed for trial in March 2027.[31]

The contrast is instructive: the European Union resolved its concerns through negotiated and monitored commitments, whereas the United States is pursuing contested litigation whose outcome remains open. The Italian competition authority (AGCM) fined Amazon approximately EUR 1.13 billion for making access to Prime eligibility and other significant advantages on its marketplace contingent on the use of its Fulfilment by Amazon logistics service. In September 2025, the Lazio Regional Administrative Court upheld the finding of abuse but annulled the fifty per cent uplift applied to the fine, and the AGCM recalculated the fine at EUR 752,397,437.55 in December 2025.[32] The error would be to assume that conduct questioned elsewhere must be unlawful in India, since statutory tests, markets and evidence differ. International experience nevertheless demonstrates that, where access to marketplace benefits is tied to the use of ancillary services, platform governance, access to data and ranking criteria warrant close scrutiny.

VIII. ANALYSIS

Section 4 is highly commendable. The language is broad enough to include a variety of exclusionary and exploitative behavior and the factors in Section 19(4) enable the CCI to consider the economic features of digital markets.[33] The provisions on denial of market access, unfair conditions, and leveraging can be invoked in relation to platform practices if the evidence meets the statutory requirements. Section 4(2)(c) can reach a dominant platform's refusal to list, or its delisting of, sellers or rival service providers where that conduct denies market access, as the MMT-Go order illustrates.

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[31] *Federal Trade Commission v Amazon.com Inc*, Case No 2:23-cv-01495 (WD Wash, filed 26 September 2023).
[32] Autorità Garante della Concorrenza e del Mercato (AGCM), Case A528 *FBA Amazon*, Provvedimento no 29925 (30 November 2021), Bollettino no 49 (13 December 2021); TAR Lazio, Section I, judgment no 15919 (2 September 2025); AGCM, Case A528 *FBA Amazon*, Provvedimento no 31776 (16 December 2025), Bollettino no 2 (12 January 2026).
[33] Competition Act, 2002, ss 4(2) and 19(4).

Section 4(2)(e) can reach a platform that uses its dominance in marketplace services to enter into or protect adjacent markets such as logistics, advertising or private-label retail. But flexibility is not enough. Without transparent public guidance on the investigation of digital markets, it is more difficult to investigate businesses, and they have to rely on uncertainty. The CCI should be transparent about how it would evaluate multi-sided markets, network effects, seller dependence, data advantages, switching costs, and non-price competition. Second is the speed at which digital markets evolve compared to the time taken for enforcement.

By the time a final order is available, it may be too late to forestall an exit of the seller, a change in the market structure, or a change in the contested practice by the platform. The Commission should effectively deploy statutory time limits and interim powers, but urgent intervention and procedural fairness must be founded upon evidence. The third is the collective market power approach. The problem of dealing with collective dominance in a concentrated market may leave some structural issues beyond section 4.

A rule on collective dominance is not an easy panacea. The fourth problem is determining how to create an effective remedy. A command to stop discriminatory ranking may be meaningless if the platform can change the principles and operation of the ranking regime with no effective transparency. By the same token, a requirement of full algorithm transparency may risk trade secret disclosure or manipulation. Likewise, penalties should be considered carefully. Penalties must be proportionate to the conduct and reflecting the statute, but also serious enough to deter infringement.

The 2023 amendments to the law have changed the basis of calculation of penalties, including the consideration of the global turnover, and while the guidelines on penalty issued by the CCI seek to structure the exercise of such discretion.[34] The underlying philosophy should continue to be to protect competition and not

[34] Competition Act, 2002, s 27, as amended by the Competition (Amendment) Act, 2023 (n 14); Competition Commission of India (Determination of Monetary Penalty) Guidelines, 2024; *Excel Crop Care Ltd v CCI* (2017) 8 SCC 47.

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competitors. It should be possible to innovate, cut costs and offer attractive prices on a platform. But it should not have a license to abuse durable market power to foreclose the rivals from competing on merits.

IX. RECOMMENDATIONS

Especially India's need to come up with a better framework to deal with competition in the digital market. First, the CCI must convey its views on concepts like market definition (especially by free services), network effects, multi-homing, switching costs, data advantage, and non-price competition. This will ensure clarity regarding companies' obligations and consistency in Commission decisions.

Secondly, CCI must build its expertise through the integration of legal, economic, data science and technological expertise. This would improve its capacity to analyze data sets, interrogate business models in the digital economy and assess the role of algorithms in competition.

Third, investigations should be speedy. Delays in digital markets can result in entrenching anti-competitive practices and rebuilding competition for them can be daunting. Interim measures should also be considered where the statutory criteria are met.

Fourth, settlements and commitments should be clear, practical and enforceable with clear time frames for implementation and effective mechanisms to monitor implementation.[35]

Fifth, the legislature should consider whether the existing competition law adequately addresses market concentration and collective market power in digital markets. The draft Digital Competition Bill, 2024 proposed an ex-ante framework for systemically significant digital enterprises, but its future remains unsettled. In July 2025, the Government informed the Lok Sabha that no timeline for its introduction had been fixed; in August 2025, the draft was reported to have been withdrawn in its published

[35] Competition Act, 2002, ss 48A and 48B (n 16).

form; and the Ministry of Corporate Affairs has since moved to commission a market study before preparing a revised draft.

In its Twenty-Fifth Report, presented on 11 August 2025, the Standing Committee on Finance supported an ex-ante framework but recommended refinement of the Bill's thresholds and designation mechanisms.[36] Any revised framework should rest on evidence of need in the marketplace and should be implemented without stifling innovation or excluding smaller businesses from growth. The conclusions of this paper do not depend on the fate of the Bill, because they rest on section 4 of the existing Act. Only the case for obligations based on collective dominance or designation depends on new legislation.

Finally, there should be better coordination between CCI and other regulators, like on matters relating to foreign investment, consumer protection, and data governance. It would help to prevent overlaps in regulatory prescriptions as well as promote a stylized approach to the regulation of digital markets in India.

X. CONCLUSION

E-commerce has transformed commerce for Indian consumers and businesses, widening the availability of products and enabling small sellers to reach consumers across the country. The same platforms, however, may control key channels to consumers and hold informational and commercial advantages that individual sellers cannot replicate. On the first research question, this paper finds that section 4 of the Competition Act, 2002 is adequate in principle.

Its provisions on unfair or discriminatory conditions and prices, predatory pricing, denial of market access and leveraging can reach the principal forms of platform abuse

[36] Ministry of Corporate Affairs, *Report of the Committee on Digital Competition Law* (27 February 2024) and draft Digital Competition Bill, 2024 (published 12 March 2024); Lok Sabha Unstarred Question No 91, 'Current Status of the Draft Digital Competition Bill' (answered 21 July 2025); Standing Committee on Finance, *Evolving Role of Competition Commission of India in the Economy, particularly the Digital Landscape* (Twenty-Fifth Report, Eighteenth Lok Sabha, 11 August 2025); 'Govt to withdraw draft Digital Competition Bill' *Financial Express* (11 August 2025) <https://www.financialexpress.com/business/industry-govt-to-withdraw-draft-digital-competition-bill-3942328/>; 'Govt plans market study on Digital Competition Bill' *Financial Express* (8 November 2025).

once dominance is established. On the second, the assessment of dominance turns less on market share than on the section 19(4) factors that capture platform power, namely seller dependence, entry barriers reinforced by network effects, vertical integration and control of commercial data, applied through the approach in *Coal India*. On the third, self-preferencing, below-cost discounting, exclusive dealing and parity clauses are not unlawful in themselves.

They become abusive when a dominant platform applies its criteria inconsistently or uses them to foreclose equally efficient rivals. On the fourth, enforcement is hampered by the difficulty of defining multi-sided markets, the information asymmetry between platforms and the CCI, and the length of proceedings, as the AIOVA and Delhi Vyapar Mahasangh litigation shows. On the fifth, the need for ex ante legislation remains open pending the Government's revised approach, but the effectiveness of section 4 does not depend on it.

The CCI's market study and proceedings show that the concerns are real, yet they do not justify a presumption that every ranking decision, exclusive launch or discount is unlawful. The single most important reform is therefore institutional: the CCI should publish guidance on how it will assess dominance and abuse in multi-sided digital markets, supported by stronger technical capacity and timely use of its interim powers, so that platforms compete on the merits and consumers continue to enjoy choice, quality, innovation and fair prices.

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