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AN EVALUATION OF INDIA'S DIGITAL COMPETITION FRAMEWORK AND THE FUTURE OF EX-ANTE REGULATION

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I. ABSTRACT

India's search for a workable model of digital-market regulation has moved through several distinct phases within the space of four years: a parliamentary diagnosis of a regulatory gap, the drafting of an ambitious ex-ante code modelled substantially on the European Union's Digital Markets Act, and a subsequent pause for evidence-gathering after that code met sustained resistance from both global technology companies and domestic start-ups. This paper traces that trajectory, from the Standing Committee on Finance's 2022 report on anti-competitive practices by big technology companies through the Draft Digital Competition Bill 2024 to the Standing Committee's own reassessment in August 2025, and situates it against the lived enforcement experience of three comparator regimes: the European Union, the United Kingdom and Germany. Each offers India a different lesson about the costs and benefits of pre-emptive market intervention. The paper argues that the pause announced in 2025 is best read not as an abandonment of ex-ante regulation but as a necessary correction to a Bill that borrowed the European Union's rulebook without its institutional infrastructure. Drawing on the Competition Commission of India's expanding ex-post caseload through 2025 and 2026, its cautious market study on artificial intelligence, and the trade-policy backdrop against which digital regulation is now negotiated, the paper contends that India's future ex-ante framework should be narrower in scope, evidence-led in its thresholds, procedurally safeguarded along German and British lines, and sequenced to work alongside, rather than instead of, a strengthened Competition Act regime. Its proposed model is built around market-specific

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thresholds, prior hearing safeguards, bespoke conduct obligations, institutional capacity-building, inter-regulatory coordination, and AI-responsive review mechanisms.

II. KEYWORDS

Competition law; ex-ante regulation; Digital Competition Bill; Digital Markets Act; Competition Commission of India.

III. INTRODUCTION

Competition law exists to keep markets contestable: to prevent firms from using positions of market power to foreclose rivals, extract unfair terms from trading partners, or freeze the process of entry and rivalry that competition is supposed to protect. In India this mandate is carried by the Competition Act 2002, which prohibits anti-competitive agreements⁴ and the abuse of a dominant position,⁵ and which vests enforcement in the Competition Commission of India. For most of its working life the Act has operated ex post: the Commission investigates and remedies conduct only after it has occurred, whether on a complaint, a reference from another authority, or its own suo motu notice of conduct reported in the press.

Digital markets test that model in a particular way. Network effects, data aggregation and the multi-sided structure of platform businesses allow a small number of firms to acquire positions that are difficult to dislodge once a market has tipped in their favour, and much of the harm a platform can do lies less in overt price-gouging than in the design choices, default settings, ranking algorithms and access terms that shape how everyone else on the platform is able to compete.⁶

Two Competition Commission of India orders illustrate the resulting timing problem well. The Commission's finding that Google had used search bias to favour its own vertical services arose from a complaint first filed in 2012 and was not decided until February 2018, six years later.⁷ It's finding that Google had abused its dominance in

⁴Competition Act 2002, s 3.

⁵Competition Act 2002, s 4.

⁶Ariel Ezrachi and Maurice Stucke, *Virtual Competition: The Promise and Perils of the Algorithm-Driven Economy* (Harvard University Press 2016) 216 to 238.

⁷*Matrimony.com Ltd v Google LLC*, Case Nos 07 and 30 of 2012 (CCI, 8 February 2018).

the Android ecosystem took a similarly long route from complaint to order.⁸ By the time either order arrived, the market structures they were meant to correct had already hardened.

It was this diagnosis, more than any single case, that persuaded Parliament to look beyond the existing Act. The Standing Committee on Finance's 2022 report on anti-competitive practices by large technology companies concluded that ex post enforcement could not keep pace with markets prone to rapid tipping, and recommended that the government examine a dedicated, forward-looking framework.⁹ The Ministry of Corporate Affairs responded by constituting the Committee on Digital Competition Law in February 2023, which reported in March 2024 together with a Draft Digital Competition Bill.¹⁰ The Bill borrowed heavily, and openly, from the European Union's Digital Markets Act, which had itself entered into force two years earlier as the most ambitious attempt anywhere to police digital gatekeepers before, rather than after, the fact.¹¹

What followed complicates any simple story about India embracing ex-ante regulation. Seventeen months after the Bill was tabled for comment, the government told Parliament that it would not proceed with the draft in its existing form, and that the ex-ante proposal would be paused pending a fresh, evidence-based market study.¹² Commentary at the time described this, not inaccurately, as a withdrawal.¹³ Yet by the middle of 2026 the Bill had not disappeared. It sat in pre-legislative consultation, the Ministry was working through more than a hundred stakeholder

⁸Umar Javeed, Sukarma Thapar and Aaqib Javeed v Google LLC, Case No 39 of 2018 (CCI, 20 October 2022).

⁹Standing Committee on Finance, Anti-Competitive Practices by Big Tech Companies (53rd Report, Lok Sabha Secretariat, December 2022).

¹⁰Committee on Digital Competition Law, Report of the Committee on Digital Competition Law (Ministry of Corporate Affairs, Government of India, 12 March 2024).

¹¹Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector (Digital Markets Act) [2022] OJ L265/1.

¹²Standing Committee on Finance, Evolving Role of Competition Commission of India in the Economy, particularly the Digital Landscape (25th Report, Lok Sabha Secretariat, 11 August 2025).

¹³'Why India Withdrew the Digital Competition Bill 2024' Medianama (16 August 2025) <https://www.medianama.com/2025/08/223-india-digital-competition-bill-2024-withdrawal/> accessed 17 August 2026.

submissions, and the Commission itself was weighing a further market study of the digital economy.¹⁴ The puzzle this paper takes up is therefore not whether India needs some forward-looking safeguard against gatekeeper power. Almost nobody involved in the debate, from the original Committee to the industry associations that opposed the 2024 draft, disputes that proposition. The real question is what shape that safeguard should take, how much institutional capacity has to exist before it is switched on, and what India's own experience since 2024, read together with the working experience of comparable regimes abroad, suggests about getting that sequencing right.

The paper proceeds in five parts. It begins with the architecture and rationale of the 2024 Bill, traces the Bill's path through 2025 and 2026 and the reasons the government has given for pausing it, sets that experience against the enforcement record now built up under the European Union's Digital Markets Act, the United Kingdom's Digital Markets, Competition and Consumers Act 2024, and Germany's section 19a of the Gesetz gegen Wettbewerbsbeschränkungen, examines how the Commission has used its ordinary and settlement powers as an interim bridge while the ex-ante project is redesigned, and closes with proposals for the model a revived Indian framework should adopt.

A. Research Objectives

This paper pursues the following research objectives:

1. To examine the evolution of India's proposed ex-ante digital competition framework from the Standing Committee on Finance's 2022 diagnosis to the Draft Digital Competition Bill 2024 and its subsequent pause for further evidence-gathering.

¹⁴The Digital Competition Bill: How India's Proposed Law Could Reshape Big Tech's Playbook' (purshoLOGY, 15 June 2026) <https://www.purshology.com/2026/06/the-digital-competition-bill-how-indias-proposed-law-could-reshape-big-techs-playbook/> accessed 17 August 2026; 'CCI May Consider Market Study on Digital Economy' Business Today (6 July 2026) <https://www.businesstoday.in/latest/economy/story/cci-may-consider-market-study-on-digital-economy-541224-2026-07-06> accessed 17 August 2026.

2. To assess whether the 2024 Bill's proposed designation thresholds, obligations and enforcement architecture were suited to the institutional and market conditions of the Indian digital economy.
3. To compare India's emerging approach with the enforcement experience of the European Union, the United Kingdom and Germany, each of which has adopted a distinct model of digital-market regulation.
4. To evaluate how the Competition Commission of India's recent ex-post enforcement, settlement powers and market-study activity may operate as an interim bridge while a narrower ex-ante framework is redesigned.
5. To propose a calibrated model for future Indian regulation that is evidence-led, procedurally safeguarded, institutionally feasible and compatible with the existing Competition Act regime.

B. Research Questions

The paper is guided by the following research questions:

1. Why did India move from an ex-post competition enforcement model towards the consideration of an ex-ante digital competition framework?
2. What were the principal design and institutional weaknesses of the Draft Digital Competition Bill 2024 that led to its pause rather than immediate enactment?
3. What lessons can India draw from the European Union's Digital Markets Act, the United Kingdom's Digital Markets, Competition and Consumers Act 2024, and Germany's section 19a GWB framework?
4. To what extent can the Competition Commission of India's existing ex-post, settlement and market-study powers address digital-market concerns during the interim period?
5. What legal and institutional design should a future Indian ex-ante framework adopt to regulate gatekeeper power without over-capturing domestic start-ups and innovation-driven platforms?

C. Research Methodology

This paper adopts a doctrinal and comparative legal research methodology. It analyses primary legal materials, including the Competition Act 2002, the Competition (Amendment) Act 2023, the Draft Digital Competition Bill 2024, the European Union's Digital Markets Act, the United Kingdom's Digital Markets, Competition and Consumers Act 2024, and Germany's section 19a of the Gesetz gegen Wettbewerbsbeschränkungen.

The doctrinal analysis is supplemented by parliamentary reports, Competition Commission of India orders, official regulatory materials, market studies and selected secondary commentary.

The comparative component is deliberately confined to the European Union, the United Kingdom and Germany. The European Union is examined because the Draft Digital Competition Bill 2024 was substantially modelled on the Digital Markets Act, which establishes a rule-based gatekeeper framework for contestable and fair digital markets.

The United Kingdom is selected because its digital markets regime uses Strategic Market Status designation and bespoke conduct requirements administered by the Competition and Markets Authority. Germany is included because section 19a GWB provides a qualitative designation model for undertakings of paramount significance across markets, enforced through the Bundeskartellamt. These comparators therefore allow the paper to assess three distinct regulatory choices: fixed ex-ante obligations, bespoke activity-specific obligations, and qualitative designation combined with conduct-specific intervention.

IV. THE DIAGNOSIS AND THE DESIGN OF THE 2024 BILL

The Bill's central innovation was the Systemically Significant Digital Enterprise, or SSDE, a status triggered by a dual test broadly modelled on the Digital Markets Act's gatekeeper designation. An enterprise offering a listed core digital service would qualify if it crossed defined financial and user thresholds, reported variously as an India turnover of around four thousand crore rupees or a global turnover of thirty

billion dollars, a domestic gross merchandise value of roughly sixteen thousand crore rupees or a global market capitalisation of seventy five billion dollars, together with at least one crore end users or ten thousand business users in India, or alternatively a set of qualitative criteria capturing bargaining power, data volumes and network effects even where the numerical thresholds were not met.¹⁵

The nine core digital services identified for coverage, among them search, app stores, operating systems, social networking, cloud services and advertising intermediation, tracked the 'core platform services' the Digital Markets Act had already made the unit of its own gatekeeper test.¹⁶

To prevent designation being engineered around through corporate structuring, the draft also introduced the Associate Digital Enterprise, a group entity whose activities were closely enough tied to a core digital service that it could be brought within an SSDE's compliance obligation even without independently meeting the thresholds. The idea was to catch conglomerate structures of the kind Alphabet presents through Search, Android, Play and YouTube, but the drafting proved to be one of the more contested parts of the Bill.

Because the Associate Digital Enterprise trigger turned on indirect involvement in a core digital service rather than on a defined market share, commentators warned that it could sweep in affiliates whose own turnover fell well short of anything resembling systemic significance, exposing them to obligations calibrated for a global platform.¹⁷ A related concern ran through submissions from India's own technology sector.

Because the thresholds were set with reference to global benchmarks rather than an empirical study of Indian market structure, they risked capturing homegrown platforms that were large by Indian standards but nowhere close to gatekeeper status

¹⁵Committee on Digital Competition Law, Report of the Committee on Digital Competition Law (Ministry of Corporate Affairs, Government of India, 12 March 2024); 'Legal Update: Overview of the Digital Competition Bill' (Veritas Legal) <https://www.veritaslegal.in/legal-update-overview-of-the-digital-competition-bill/> accessed 17 August 2026.

¹⁶Regulation (EU) 2022/1925, art 2(2).

¹⁷"India's Digital Market Rules: Back to the Drawing Board, and Why It's a Good Thing" (Axiom5, 10 September 2025) <https://blog.axiom5.in/p/indias-digital-market-rules-back> accessed 17 August 2026.

internationally; one industry analysis identified more than a dozen Indian digital businesses, from food delivery and fintech to e-commerce, that could plausibly meet the SSDE test despite not being part of the global Big Tech cohort the Bill was principally designed to reach.¹⁸

The obligations the Bill would have imposed once designation occurred were drawn, again, from the Digital Markets Act's playbook: a duty to deal with business users on fair, reasonable and non-discriminatory terms, a prohibition on self-preferencing an SSDE's own products in search or ranking results, restrictions on combining data gathered from business users with data from elsewhere in the group, a bar on anti-steering clauses that stop merchants directing customers to cheaper channels outside the platform, and limits on tying and bundling.¹⁹ Several of these provisions had an obvious domestic parentage.

The self-preferencing rule tracked the Commission's own 2022 finding that Google had used its control of Android licensing to entrench its search and browser products,²⁰ and the anti-steering and fair-dealing duties echoed the Commission's finding, in the same month, that wide price-parity clauses imposed by MakeMyTrip and Goibibo on hotel partners amounted to an abuse of dominance.²¹ In each case, however, the Bill's drafters were converting a finding that had taken roughly three years to reach into a rule that would apply automatically and in advance, without the fact-specific inquiry the Commission had originally undertaken.

That trade-off, speed for particularity, sits at the heart of any ex-ante design, and it is precisely where the Bill's critics concentrated their fire, arguing that a flat prohibition

¹⁸Shradhanjali Sarma, 'Part II: Decoding India's Digital Competition Bill: Implications on Startups and MSME Ecosystems' (All Things Tech, Substack) <https://allthingstech2024.substack.com/p/part-ii-decoding-indias-digital-competition> accessed 17 August 2026.

¹⁹Committee on Digital Competition Law, Report of the Committee on Digital Competition Law (Ministry of Corporate Affairs, Government of India, 12 March 2024) ch 4.

²⁰Umar Javeed, Sukarma Thapar and Aaqib Javeed v Google LLC, Case No 39 of 2018 (CCI, 20 October 2022).

²¹FHRAI v MakeMyTrip India Pvt Ltd, Case Nos 14 of 2019 and 01 of 2020, 2022 SCC OnLine CCI 58 (CCI, 19 October 2022).

on conduct such as self-preferencing left a designated firm no room to show that a given instance of preferencing was efficiency-enhancing rather than exclusionary.

The enforcement architecture compounded the difficulty. The Bill proposed a new Digital Markets and Data Unit inside the Commission, loosely modelled on the United Kingdom's Digital Markets Unit and the European Commission's Directorate-General for Competition, to carry out the technical work of algorithmic and platform assessment that the Commission's existing staff had no particular training to perform.²² Yet the draft said little about how the unit would be staffed, resourced or held accountable, leaving what was arguably the Bill's most important institutional reform in the realm of aspiration rather than statute.

Appeals were to run through the National Company Law Appellate Tribunal and then the Supreme Court, the same route already carrying the Tribunal's corporate insolvency caseload, with no dedicated technical bench and none of the fast-track review that, as later sections of this paper show, has anchored due process in the German and British regimes.

Penalties, meanwhile, could reach ten per cent of an enterprise's global turnover, matching the Digital Markets Act's own ceiling and far exceeding the 'relevant turnover' base ordinarily used under the Competition Act, a choice that signalled seriousness of intent but also invited the proportionality objections that would later feature heavily in parliamentary and industry submissions.

V. PAUSE, NOT RETREAT: THE BILL'S PATH THROUGH 2025 AND 2026

The formal turning point came on 11 August 2025, when the Standing Committee on Finance presented its report on the Evolving Role of the Competition Commission of India in the Economy, particularly the Digital Landscape.²³ The Report did not

²²Committee on Digital Competition Law, Report of the Committee on Digital Competition Law (Ministry of Corporate Affairs, Government of India, 12 March 2024) ch 6.

²³Standing Committee on Finance, Evolving Role of Competition Commission of India in the Economy, particularly the Digital Landscape (25th Report, Lok Sabha Secretariat, 11 August 2025).

repudiate the case for ex-ante regulation. If anything, it restated it, noting that digital markets required a shift from a reactive to a proactive regulatory posture.²⁴ What it declined to endorse was the 2024 Bill as drafted.

The Ministry of Corporate Affairs told the Committee, in evidence given some months earlier, that any ex-ante framework had to be reconciled with the interests of India's own start-up and MSME ecosystem, and that the draft as it stood risked exactly the kind of collateral capture the industry analyses of SSDE thresholds had warned about.²⁵ The Committee also pressed a second, more institutional point: that the Commission's sanctioned strength and technical capacity had not caught up with the responsibilities the Bill proposed to hand it, a gap the Report treated as a precondition for any pre-emptive regime rather than a detail to be fixed later.²⁶

In the following months the Ministry moved to commission an independent market study to reconsider the Bill's designation thresholds and the scope of services it would cover, inviting a research agency to examine, among other things, whether the original list of core digital services still matched a market being reshaped by generative artificial intelligence.²⁷ A former acting chairman of the Commission put the point plainly: search and productivity software, once treated as settled gatekeeper territory, were themselves being contested by AI-native entrants, and any threshold frozen against a 2024 snapshot of the market risked being out of date before it was ever notified.²⁸

²⁴PRS Legislative Research, 'Evolving Role of Competition Commission of India'

<https://prsindia.org/policy/report-summaries/evolving-role-of-competition-commission-of-india> accessed 17 August 2026.

²⁵'India Pauses Ex-Ante Proposal for Digital Markets' Medianama (13 August 2025)

<https://www.medianama.com/2025/08/223-parliamentary-report-digital-competition-bill-delayed/> accessed 17 August 2026.

²⁶nasscom, '[Analysis] Parliament's Standing Committee Report Calls for Strengthening CCI and Proposes Refinements in the Digital Competition Bill' (nasscom Community, 15 December 2025)

<https://community.nasscom.in/communities/public-policy/analysis-parliaments-standing-committee-report-calls-strengthening-cci> accessed 17 August 2026.

²⁷'Indian Govt Plans Market Study on Digital Competition Bill' (BRICS Competition, 10 November 2025) <https://www.bricscompetition.org/news/indian-govt-plans-market-study-on-digital-competition-bill> accessed 17 August 2026.

²⁸ibid.

By the middle of 2026 that process had not produced a fresh public draft. The Bill remained in pre-legislative consultation, with more than a hundred stakeholder submissions, spanning legal practitioners, industry bodies, civil society groups and both domestic and foreign platforms, still under review.²⁹ The Commission, for its part, was reportedly weighing a market study of its own into the wider digital economy, a step that would sit alongside rather than substitute for the Ministry's threshold review.³⁰

None of this happened in a vacuum. In March 2025 the government withdrew the six per cent equalisation levy on digital advertising, a step the finance ministry linked to easing trade friction with the United States after American officials had criticised the levy as discriminatory toward American technology companies.³¹ Almost a year later, the joint statement accompanying the India-United States interim trade framework of February 2026 committed both countries to addressing what it called discriminatory or burdensome practices and other barriers to digital trade as part of a broader bilateral trade agreement.³²

It would be an overstatement to treat the Digital Competition Bill's pause as simply a concession extracted through trade diplomacy; the domestic objections from the Standing Committee, the Commission and India's own start-up sector were substantial and predate the most intense phase of tariff negotiation. But it would be equally naive to treat the timing as coincidental. Digital market regulation has become,

²⁹'The Digital Competition Bill: How India's Proposed Law Could Reshape Big Tech's Playbook' (purshoLOGY, 15 June 2026) <https://www.purshology.com/2026/06/the-digital-competition-bill-how-indias-proposed-law-could-reshape-big-techs-playbook/> accessed 17 August 2026.

³⁰'CCI May Consider Market Study on Digital Economy' Business Today (6 July 2026) <https://www.businesstoday.in/latest/economy/story/cci-may-consider-market-study-on-digital-economy-541224-2026-07-06> accessed 17 August 2026.

³¹Aftab Ahmed and Manoj Kumar, 'India to Scrap Digital Ad Tax, Easing US Concerns' Reuters, reproduced at <https://www.aol.com/news/india-plans-scrap-digital-ad-043159177.html> accessed 17 August 2026.

³²'India and US Issue Joint Statement Announcing Framework for an Interim Trade Agreement' (News on Air, 7 February 2026) <https://www.newsonair.gov.in/india-and-us-issue-joint-statement-announcing-framework-for-an-interim-trade-agreement> accessed 17 August 2026; 'US-India Strike Interim Trade Deal, Cut Tariffs to 18%' (India Briefing, 24 February 2026) <https://www.india-briefing.com/news/us-india-interim-trade-agreement-18-percent-tariff-42514.html/> accessed 17 August 2026.

in India as in the European Union, a subject that is read abroad as a trade signal as much as a competition-policy choice, and any account of why the ex-ante project slowed in 2025 has to hold both explanations, institutional caution and external pressure, together rather than picking one.

The most accurate description of where matters stood by mid-2026 was neither withdrawal nor revival but calibration: a Commission leaning more heavily on the ex-post and settlement tools already available to it, a Ministry rebuilding the evidentiary base for a narrower ex-ante instrument, and a Parliament that, having pushed for the original 2022 diagnosis, remained on record wanting some pre-emptive tool once the design problems were fixed. That position was materially updated on 10 August 2026, when the Standing Committee on Finance presented its Thirty-Seventh Report, an action-taken report that urged the government to move beyond continued deferral and finalise the Digital Competition Bill on a phased and nuanced basis.

The Committee recommended that the Bill's coverage be widened to include virtual assistants and cloud services, that the SSDE designation framework include a rebuttal mechanism comparable to the Digital Markets Act so that firms caught by numerical thresholds may contest designation, and that the Commission notify a companion E-commerce Code of Conduct to address platform neutrality, algorithmic transparency and non-discriminatory access for smaller businesses.

The report therefore does not displace the calibration narrative; it sharpens it. Parliament's position by August 2026 was not that ex-ante regulation should be abandoned, but that it should proceed with more precise thresholds, procedural safeguards and sector-specific guidance. Whether that calibration succeeds depends heavily on what India borrows, and what it deliberately declines to borrow, from jurisdictions that have already put ex-ante rules into practice.

VI. THREE REGIMES IN PRACTICE: THE EUROPEAN UNION, THE UNITED KINGDOM AND GERMANY

A. The European Union's Digital Markets Act: Clarity at the Cost of Friction

The Digital Markets Act designates gatekeepers using thresholds set out in the Regulation itself, an EU-wide turnover of at least €7.5 billion or a market capitalisation of €75 billion, combined with at least forty five million monthly end users and ten thousand business users within the Union, and then imposes a fixed list of obligations on every firm that qualifies, irrespective of the particular service in question.³³ Alphabet, Amazon, Apple, ByteDance, Meta and Microsoft were designated within the Act's first year of application.³⁴

The Regulation's first real test of enforcement came on 23 April 2025, when the Commission fined Apple €500 million for restricting app developers from directing users to cheaper offers outside the App Store, in breach of the anti-steering duty in Article 5(4), and fined Meta €200 million for failing to offer users a genuine choice between personalised advertising and a paid, privacy-respecting alternative, in breach of the prohibition on combining personal data across services without consent in Article 5(2).³⁵ Both companies were given sixty days to comply or face further periodic penalties, and Apple was separately ordered to open iOS connectivity features to third-party smartwatches and headphones by the end of 2026.³⁶

The episode illustrates both the strength and the cost of the Digital Markets Act's rule-based design. The strength lies in predictability: because the obligations are fixed in the Regulation rather than negotiated case by case, the Commission could move from breach to fine without the extended, firm-specific investigation an abuse-of-

³³Regulation (EU) 2022/1925, arts 3, 5 to 7.

³⁴European Commission, 'Commission Finds Apple and Meta in Breach of the Digital Markets Act' (Digital Strategy, 23 April 2025) <https://digital-strategy.ec.europa.eu/en/news/commission-finds-apple-and-meta-breach-digital-markets-act> accessed 17 August 2026.

³⁵*ibid*; 'The DMA's Teeth: Meta and Apple Fined by the European Commission' (Kluwer Competition Law Blog, 28 April 2025) <https://legalblogs.wolterskluwer.com/competition-blog/the-dmas-teeth-meta-and-apple-fined-by-the-european-commission/> accessed 17 August 2026.

³⁶'Apple Fined €500m, Meta €200m, EU's Digital Rulebook Is Now Enforcing' (Kanzlei Theo Funk, 13 April 2026) https://theofunklaw.com/dsa_article.html accessed 17 August 2026.

dominance case under ordinary EU competition law would have required. The cost lies in exactly the rigidity that makes such speed possible.

The decisions arrived a month later than expected, reportedly held back while the Commission weighed the effect of an escalating tariff dispute with the Trump administration, which had already accused Brussels of using digital regulation to target American firms.³⁷ The Regulation does retain some capacity for calibration at the margins: the Commission agreed in the same set of decisions to lift Facebook Marketplace's own gatekeeper designation after Meta showed that the service had fallen below the ten-thousand-business-user threshold, evidence that the framework can shrink as well as grow its own footprint.³⁸

B. The United Kingdom's Digital Markets, Competition and Consumers Act 2024: Flexibility in Motion

The United Kingdom took a different design choice. Rather than fixing obligations in the statute itself, the Digital Markets, Competition and Consumers Act 2024 empowers the Competition and Markets Authority to designate a firm as having Strategic Market Status in relation to a specific digital activity once it clears a turnover gateway, more than £1 billion in UK revenue or £25 billion globally, and is shown to hold substantial and entrenched market power together with a position of strategic significance.³⁹

Designation carries no presumption of wrongdoing; it is only after designation that the Authority can impose bespoke conduct requirements tailored to the specific harm

³⁷EU Hits Apple and Meta with Hundreds of Millions of Dollars in New Fines, Enforcing Digital Competition Rules' CBS News <https://www.cbsnews.com/news/eu-fine-apple-meta-breach-digital-markets-act-dma/> accessed 17 August 2026.

³⁸European Commission, 'Commission Finds Apple and Meta in Breach of the Digital Markets Act' (Digital Strategy, 23 April 2025) <https://digital-strategy.ec.europa.eu/en/news/commission-finds-apple-and-meta-breach-digital-markets-act> accessed 17 August 2026.

³⁹Digital Markets, Competition and Consumers Act 2024, pt 1; Competition and Markets Authority, "Google's General Search and Search Advertising Services" (GOV.UK) <https://www.gov.uk/cma-cases/googles-general-search-and-search-advertising-services> accessed 17 August 2026.

identified in that activity.⁴⁰ Google was designated in relation to general search and search advertising in October 2025, and Google and Apple were separately designated in relation to their mobile ecosystems in the same month.⁴¹

What distinguishes the British regime, at least so far, is the pace at which designation has translated into remedy. Within eight months of designating Google for search, the Authority had published and then imposed a publisher conduct requirement, in June 2026, followed shortly afterward by fair-ranking and data-portability requirements, and had opened a consultation on a steering conduct requirement for Google's mobile platform in the same month.⁴² The Authority also secured commitments from Apple and Google to improve interoperability and app-store terms on their mobile platforms, publishing a phased roadmap in advance so that affected firms and rivals alike knew what to expect and when.⁴³ The lesson for India is less about the substance of any single requirement than about sequencing: a bespoke, service-by-service regime, built around a published roadmap and staged consultation, was able to move from designation to enforceable remedy inside a single year, a pace the far more rule-heavy Digital Markets Act needed closer to three years to match.

C. Germany's Section 19a GWB: Qualitative Designation with Fast Judicial Review

Germany's tenth amendment to its Act against Restraints of Competition, in force since January 2021, gives the Bundeskartellamt a two-step power: first to determine

⁴⁰What Apple's UK Strategic Market Status Designation Means for Browsers and Web Apps' (Open Web Advocacy) <https://open-web-advocacy.org/blog/what-apples-uk-strategic-market-status-designation-means-for-browsers-and-web-apps/> accessed 17 August 2026.

⁴¹'CMA Completes Its Initial Designations in Mobile Ecosystems and Search' (Steptoe, 23 October 2025) <https://www.steptoel.com/en/news-publications/steptahead-antitrust-and-competition-insights/cma-completes-its-initial-designations-in-mobile-ecosystems-and-search.html> accessed 17 August 2026.

⁴²Competition and Markets Authority, "Google's General Search and Search Advertising Services" (GOV.UK) <https://www.gov.uk/cma-cases/googles-general-search-and-search-advertising-services> accessed 17 August 2026; Competition and Markets Authority, "Google's Mobile Platform" (GOV.UK) <https://www.gov.uk/cma-cases/googles-mobile-platform> accessed 17 August 2026.

⁴³Will Hayter, 'Improving the Way Apple and Google Deliver App Store Services and Enhancing iOS Interoperability in the UK' (CMA, 10 February 2026) <https://competitionandmarkets.blog.gov.uk/2026/02/10/improving-the-way-apple-and-google-deliver-app-store-services-and-enhancing-ios-interoperability-in-the-uk/> accessed 17 August 2026.

that an undertaking is of paramount significance for competition across markets, a qualitative finding resting on factors such as vertical integration, financial strength, access to data and ecosystem control rather than on a fixed numerical threshold, and second, once that finding is made, to prohibit specific practices such as self-preferencing, impeding interoperability or leveraging data advantages into adjacent markets.⁴⁴ By late 2024 the Bundeskartellamt had designated five undertakings, Alphabet, Amazon, Apple, Meta and Microsoft, under this power.⁴⁵

Two of those designations, Amazon's and Apple's, were challenged before the Bundesgerichtshof, Germany's Federal Court of Justice, and both were upheld on appeal, Amazon's in April 2024.⁴⁶ That the country's highest civil court, rather than a specialist competition tribunal several steps removed, hears these appeals directly is itself significant: it gives designated firms a genuine and rapid avenue of challenge while leaving the Bundeskartellamt free to pursue conduct-specific proceedings once a designation is settled. Those proceedings have already produced concrete change rather than merely the threat of it, including alterations to how Google processes user data and presents News Showcase and Maps results in Germany.⁴⁷

For India, still relying on a Competition Act appellate chain that runs from the Commission through the National Company Law Appellate Tribunal to the Supreme Court, a chain already showing signs of delay in the WhatsApp-Meta matter discussed below, the German model demonstrates that procedural rigour and enforcement speed are not in tension; they can reinforce each other if the right court hears the case at the right stage.

⁴⁴Gesetz gegen Wettbewerbsbeschränkungen (GWB), s 19a, as inserted by the Tenth Act Amending the Act against Restraints of Competition 2021 (Germany).

⁴⁵International Bar Association, 'Digital Platform Regulation: Developments in Germany' <https://www.ibanet.org/digital-platform-regulation-germany-dma> accessed 17 August 2026.

⁴⁶'A Report from the Courtroom: Amazon's Paramount Significance for Competition Across Markets Confirmed in Germany' (SCiDA, 24 April 2024) <https://scidaproject.com/2024/04/24/a-report-from-the-courtroom-amazons-paramount-significance-for-competition-across-markets-confirmed-in-germany/> accessed 17 August 2026.

⁴⁷Bundeskartellamt, 'Proceedings Against Large Digital Companies' (Bundeskartellamt, last updated February 2026) https://www.bundeskartellamt.de/EN/Digital_economy/proceedings_against_large_digital_companies/proceedings_against_large_digital_companies_node.html accessed 17 August 2026.

D. Reading the Three Regimes Together

None of these three regimes is available to India in an unmodified form. The Digital Markets Act's fixed-list approach presumes an administrative apparatus, the European Commission's Directorate-General for Competition, built up over decades of enforcement under Articles 101 and 102 TFEU, and its predictability has come bundled with exposure to exactly the kind of transatlantic trade friction India's own trade negotiators would prefer to avoid.

The United Kingdom's model requires an authority confident enough to publish a public roadmap and hold to it, and a political environment willing to tolerate the slower, activity-by-activity pace that bespoke regulation entails. Germany's model presumes a specialist apex court willing to hear digital-market appeals on an expedited basis, a feature the Indian judicial architecture does not currently offer the Commission. What each does supply, though, is a discrete design lesson: predictability from Brussels, sequencing and proportionate flexibility from London, and procedural legitimacy anchored in fast judicial review from Bonn. How much of each India can plausibly absorb depends, in turn, on what its own Commission has already been able to do with the tools it has.

VII. THE INTERIM BRIDGE: EX-POST ENFORCEMENT SINCE THE PAUSE

A pause in ex-ante legislation is not the same as a pause in enforcement, and the Commission's own caseload through 2025 and 2026 is worth examining on its own terms, both because it shows that the ex-post toolkit still has real bite, particularly once combined with the settlement and commitment powers introduced by the Competition (Amendment) Act 2023,⁴⁸ and because it exposes the very timeliness and predictability problems that first motivated the case for ex-ante intervention.

The clearest example of the first point is the Commission's handling of its long-running investigation into Google's Android TV licensing. On 21 April 2025 the

⁴⁸Competition (Amendment) Act 2023, s 48A.

Commission accepted a settlement application from Google under its own newly framed Settlement Regulations, closing the matter with a settlement amount of roughly ₹20.24 crore after a Director General's report had already found Google's television application distribution and Android compatibility agreements with manufacturers such as Xiaomi and TCL to be an abuse of dominance.⁴⁹

It was the first settlement order the Commission had ever issued, and it resolved a five-year-old dispute in a fraction of the time a fully litigated abuse-of-dominance finding would have taken, precisely the kind of speed the 2023 amendments were designed to unlock.

The Commission's other major platform case in the period now illustrates a different limitation of ex-post enforcement: not merely appellate delay, but appellate narrowing of both liability and remedy. In November 2024, the Commission found that WhatsApp's 2021 privacy policy update, which conditioned continued use of the service on expanded data-sharing with other Meta companies, involved abuse of dominance, imposed a penalty of ₹213.14 crore, and directed, among other remedies, a five-year restriction on WhatsApp sharing user data with Meta companies for advertising purposes.

On appeal, the National Company Law Appellate Tribunal's final order of 4 November 2025 partly upheld and partly modified the Commission's order. It upheld the findings of breach under Sections 4(2)(a)(i) and 4(2)(c) and sustained the ₹213.14 crore penalty, but held that the Commission's finding under Section 4(2)(e), concerning leveraging from the OTT messaging market into online display advertising, was not sustainable. It also set aside the five-year advertising data-sharing ban, while leaving the remaining user-choice and disclosure-related directions intact.

⁴⁹Kshitiz Arya v Google LLC, Case No 19 of 2020 (CCI, Settlement Order, 21 April 2025); "CCI's First-Ever Settlement Order: A Landmark in Google's Android TV Case" (Mondaq, 23 May 2025) <https://www.mondaq.com/india/antitrust-eu-competition/1628560/ccis-first-ever-settlement-order-a-landmark-in-googles-android-tv-case> accessed 17 August 2026.

The case therefore no longer supports a simple delay-based account of ex-post enforcement. Its stronger lesson is that even where the Commission identifies serious platform conduct concerns, appellate review may substantially reshape the legal theory and remedy. That point matters for any future ex-ante framework, because SSDE designation and conduct obligations will require not only faster review, but also more precise statutory standards and proportionate remedies capable of surviving appellate scrutiny.

Two closures in March 2026 show a Commission willing to find dominance without automatically finding abuse. In the BookMyShow matter, the Director General had concluded that Big Tree Entertainment held a dominant position in online movie-ticket intermediation and had potentially contravened Section 4 through exclusivity arrangements with cinemas and discriminatory data and revenue sharing; the Commission agreed that BookMyShow was dominant but closed the case on 12 March 2026, finding no abuse on the facts before it.⁵⁰ A day earlier the Commission had closed a separate case against IndiGo and Air India alleging coordinated cancellation charges, rejecting the theory of collective dominance the Act does not itself recognise.⁵¹

Read together, the two orders suggest a Commission comfortable using ex-post review to test dominance rigorously without presuming that dominance alone justifies intervention, an instinct that speaks directly to the proportionality concerns raised against the 2024 Bill's more categorical prohibitions. Investigations into Apple's iOS ecosystem remained pending through the middle of 2026 and were widely

⁵⁰'Competition Monthly April 2026' (Mondaq, 13 April 2026) <https://www.mondaq.com/india/antitrust-eu-competition/1772200/competition-monthly-april-2026> accessed 17 August 2026; Trilegal, 'Competition Quarterly Milestones (January-March 2026)' (Trilegal, 15 April 2026) <https://trilegal.com/knowledge-repository/trilegal-update-competition-quarterly-milestones-january-march-2026/> accessed 17 August 2026.

⁵¹*ibid.*

expected to test the boundaries of platform-neutrality obligations under existing law before any ex-ante equivalent arrives.⁵²

The Commission's most direct engagement with the technology that will shape the next phase of this debate, artificial intelligence, points in a similarly cautious direction. Its market study on Artificial Intelligence and Competition, conducted through the Management Development Institute and released on 6 October 2025, found that AI-driven pricing and ranking algorithms could in principle facilitate tacit collusion without human intervention, that concentrated control over data and computing infrastructure among a handful of large firms was becoming a structural entry barrier for Indian AI start-ups, and that self-preferencing risks were likely to migrate from platform design into model design as AI systems increasingly mediate search, recommendation and commerce.⁵³

Its response to those findings was advocacy rather than regulation: workshops on AI and competition compliance, a proposed think tank to build internal expertise, encouragement of voluntary self-audits across the AI stack, and closer coordination with international competition authorities, rather than any new binding ex-ante duty.⁵⁴ Commentators have described the resulting posture as regulation through persuasion rather than prohibition,⁵⁵ and at least one critique has warned that a light-touch, consumer-welfare-oriented approach to AI concentration sits uneasily with the Committee on Digital Competition Law's own founding premise that ex-post, harm-based review is structurally too slow for markets prone to tipping.⁵⁶ The tension is

⁵²'How Did the CCI Handle the Digital Competition Domain in 2025? And What Should It Do in 2026?' Medianama (5 January 2026) <https://www.medianama.com/2026/01/223-cci-digital-competition-2025-what-should-it-do-2026/> accessed 17 August 2026.

⁵³Competition Commission of India, Market Study on Artificial Intelligence and Competition (Management Development Institute, Gurgaon, 6 October 2025).

⁵⁴Press Information Bureau, 'Competition Commission of India Releases Market Study Report on Artificial Intelligence and Competition' (PIB, 6 October 2025) <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2175607> accessed 17 August 2026.

⁵⁵'The CCI's AI Market Study: Regulation Through Persuasion, Not Prohibition' (Axiom5, 17 October 2025) <https://blog.axiom5.in/p/the-ccis-ai-market-study-regulation> accessed 17 August 2026.

⁵⁶Abhineet Nayyar, 'India's AI Market Regulation Risks Falling on Dated Ideas' (ProMarket, 7 April 2026) <https://www.promarket.org/2026/04/07/indias-ai-market-regulation-risks-falling-on-dated-ideas/> accessed 17 August 2026.

real, and this paper does not attempt to resolve it here; it is taken up again in the proposals that follow.

Taken together, the record since the Bill's pause supports a mixed verdict. The Commission has shown that its ex-post and settlement powers can deliver genuine, timely outcomes, as the Android TV settlement demonstrates, and that it is willing to draw careful lines between dominance and abuse rather than treating the former as a proxy for the latter. But the WhatsApp-Meta stay shows that appellate delay has not gone away merely because the underlying finding arrived faster, and the AI market study shows a regulator still more comfortable advocating than legislating even where its own evidence points to structural risk. Neither observation settles the ex-ante question on its own. Both should inform how any revived Indian framework is built.

VIII. TOWARDS A CALIBRATED MODEL: WHAT THE FUTURE OF EX-ANTE REGULATION IN INDIA SHOULD LOOK LIKE

The evidence surveyed above, now read together with the Standing Committee on Finance's Thirty-Seventh Report of 10 August 2026, points away from two tempting but mistaken responses to the events of 2025 and 2026: reviving the 2024 Bill largely unchanged once political conditions allow, and concluding that India should abandon ex-ante regulation altogether in favour of a purely ex-post model.

The Committee's action-taken report is significant because it converts several concerns that this paper identifies independently into formal parliamentary recommendations: evidence-sensitive SSDE designation, a rebuttal mechanism for firms that meet quantitative thresholds without possessing genuine systemic significance, phased implementation, and clearer coverage of emerging services such as virtual assistants and cloud infrastructure. What the record supports, therefore, is not a model developed in isolation from Parliament's latest position, but a narrower and more deliberately sequenced hybrid that refines, and in some respects qualifies, the Committee's renewed call for finalisation. That model is built around six specific choices.

The first is to let designation thresholds follow the market study rather than the other way around. The 2024 draft's numbers were borrowed substantially from the Digital Markets Act's own turnover and user benchmarks, adjusted for the Indian market but not derived from it, which is one reason an industry analysis could plausibly place more than a dozen homegrown platforms inside the SSDE net despite the Bill's evident target being a handful of global gatekeepers.⁵⁷

The market studies the Ministry commissioned in late 2025, and the parallel study the Commission was itself weighing by mid-2026, exist precisely to correct that borrowing, and the resulting thresholds should be set with direct reference to Indian market shares, network-effect metrics and start-up funding patterns rather than to figures calibrated for the European single market.

The second is to import the procedural safeguards the 2024 draft conspicuously lacked. Germany's requirement that a firm be given a genuine opportunity to contest designation before a qualitative finding is made, followed by fast, direct appellate review from a specialist apex court, offers a workable template; so, does the United Kingdom's practice of publishing draft decisions, consulting on them, and issuing a public roadmap before conduct requirements take effect. Neither is exotic. Both are, in essence, applications of the reasonableness standard India's own courts already read into Article 14 of the Constitution,⁵⁸ and building them into the statute rather than leaving them to administrative discretion would address the arbitrariness objections that featured prominently in the Standing Committee's own evidence.

The third is to prefer bespoke, sequenced conduct requirements over a uniform code of prohibitions. The Digital Markets Act's fixed obligations gave the European Commission speed once a breach was found, but that same rigidity is what has made the Regulation a recurring point of transatlantic trade friction and has left designated firms little room to justify conduct on efficiency grounds.

⁵⁷Shradhanjali Sarma, 'Part II: Decoding India's Digital Competition Bill: Implications on Startups and MSME Ecosystems' (All Things Tech, Substack) <https://allthingstech2024.substack.com/p/part-ii-decoding-indias-digital-competition> accessed 17 August 2026.

⁵⁸EP Royappa v State of Tamil Nadu (1974) 4 SCC 3.

The Competition and Markets Authority's practice of tailoring conduct requirements to a specific service, search-ranking rules for Google's search business, steering and interoperability requirements for its mobile platform, moving from designation to enforceable remedy within roughly a year, suggests that flexibility and speed are not necessarily in tension if a regulator commits publicly to a timetable.

The fourth, and arguably the precondition for the other three, is to build institutional capacity ahead of, rather than alongside, the statute that will depend on it. The Standing Committee's own finding that the Commission's sanctioned strength and technical expertise had not kept pace with its existing mandate, let alone a new preemptive one, means that any Digital Markets and Data Unit needs a detailed statutory basis for its recruitment, funding and accountability before it is asked to assess algorithmic conduct or platform architecture, not the aspirational, single-clause mention the 2024 draft gave it. Germany's Bundeskartellamt and the United Kingdom's Competition and Markets Authority both entered their ex-ante regimes with established digital-markets units already in place; India's sequencing has so far run in the opposite direction.

The fifth is explicit coordination rather than parallel jurisdiction. Overlap between the Commission's proposed powers and the Data Protection Board established under the Digital Personal Data Protection Act 2023,⁵⁹ together with sectoral regulators such as the Reserve Bank of India, the Telecom Regulatory Authority of India and the Ministry of Electronics and Information Technology, was repeatedly flagged during the 2024 consultation as a source of duplicated or contradictory orders, and it remained unresolved through the Bill's pause. A statutory coordination protocol, akin to the United Kingdom's Digital Regulation Cooperation Forum, would let these bodies share evidence and align remedies rather than each regulating the same conduct from a different angle.

The sixth is to keep the framework open to artificial intelligence without rushing to legislate around it. The Commission's own AI market study shows real appetite for

⁵⁹Digital Personal Data Protection Act 2023, s 18.

monitoring algorithmic collusion and data concentration in the AI stack, but its preference for advocacy over binding rules, at least for now, is defensible given how early India's evidentiary base on AI-driven market power still is.

The better response is not to write AI-specific ex-ante duties into a revived Digital Competition Bill before that evidence exists, but to keep the list of core digital services deliberately open to revision, as officials have themselves suggested, so that a threshold set in 2026 does not calcify against a market that generative AI is actively reshaping.

None of this can be designed in ignorance of the trade-policy backdrop against which it will be negotiated. The equalisation levy's withdrawal and the digital-trade language in the 2026 interim framework with the United States are reminders that India's regulatory choices in this space are read internationally as much as domestically. That is a reason for evidentiary discipline and procedural rigour, not a reason to abandon a project whose underlying justification, the structural entrenchment risk in tipping-prone digital markets, has nothing to do with any particular trading partner. A narrower, better-sequenced Digital Competition Act, arriving once the Commission has the staff and the mandate to run it, and working alongside rather than instead of a Competition Act that has itself shown real bite since 2024, is a more defensible destination than either reviving the 2024 draft wholesale or quietly letting the ex-ante project lapse.

IX. CONCLUSION

India's engagement with ex-ante digital competition regulation has not followed a straight line, and it would be a mistake to read that as drift or indecision. What the record from the Standing Committee's 2022 diagnosis through the 2024 Bill, its 2025 pause and the market studies now under way in 2026 actually shows is a system testing, in real time, how much of the European Union's rulebook it can usefully borrow, how much of the United Kingdom's sequencing it should copy, and how much of Germany's procedural anchoring it needs before pre-emptive power can safely be handed to a regulator still building out its own technical capacity.

The Competition Commission of India has, in the interim, demonstrated that its existing and recently strengthened ex-post tools, a first-ever settlement order in the Android TV matter, a careful refusal to treat dominance as a proxy for abuse in BookMyShow, the appellate narrowing of the WhatsApp-Meta order, and a cautious but evidence-gathering posture on artificial intelligence, are not a poor substitute for ex-ante regulation but a genuine, if institutionally constrained, bridge to it.

The measure of success for India's next Digital Competition Bill will not be how quickly it arrives or how closely it mirrors any single foreign template. It will be whether, when it does arrive, the Commission has the staff to run it, the statute gives affected firms a real chance to be heard before designation, appeals move faster than they currently do under the Competition Act, and the thresholds it sets reflect the structure of Indian digital markets rather than the structure of someone else's.

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