



## CCIA Comments on the Report on Digital Competition Prepared by the Indian Ministry of Corporate Affairs' Committee on Digital Competition Law and Draft Digital Competition Bill

The Computer & Communications Industry Association (CCIA)<sup>1</sup> welcomes the opportunity to submit comments on the Report on Digital Competition<sup>2</sup> (the “Report”) prepared by the Indian Ministry of Corporate Affairs' Committee on Digital Competition Law (the “Committee”), which included a proposed Draft Digital Competition Bill<sup>3</sup> (the “Bill”) and was released for public consultation on March 12, 2024.<sup>4</sup>

Digital platforms offer innovative and popular services that have revolutionized the way Indian consumers and businesses interact with each other. CCIA strongly believes that, to determine if there are any potential competition concerns that need to be addressed through regulation, it is paramount for Indian policymakers to understand the various digital business models and services fully and accurately, as well as the industries in which they operate. As such, when proposing any *ex-ante* regulatory framework for digital markets, Indian policymakers must consider market realities and how the proposed regulation might affect businesses, consumers, and the country's overall economy.

These comments discuss important principles for Indian policymakers to consider when contemplating and designing any regulation for digital markets. Without relying on some key regulatory considerations, an *ex-ante* regulation could run the risk of harming Indian consumers, competition, and innovation. Therefore, these comments offer some important regulatory principles and recommendations regarding some of the key aspects of India's digital economy and its competitive ecosystem.

Importantly, jurisdictions considering *ex-ante* regulatory frameworks should closely study and learn from the experience of other countries but avoid relying on untested international

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<sup>1</sup> CCIA is an international, not-for-profit trade association representing a broad cross-section of technology and communications firms. For over fifty years, CCIA has promoted open markets, open systems, and open networks. The Association advocates for sound competition policy and antitrust enforcement. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. For more, visit [www.ccianet.org](http://www.ccianet.org).

<sup>2</sup> Ministry of Corporate Affairs, Government of India, “Report of the Committee on Digital Competition Law” (Feb. 27, 2024),

<https://www.mca.gov.in/bin/dms/getdocument?mcs=gzGtvSkE3zIVhAuBe2pbow%253D%253D&type=open>.

<sup>3</sup> *Id.* at 151.

<sup>4</sup> Ministry of Corporate Affairs, Government of India, “MCA invites public comments on Report of Committee on Digital Competition Law and Draft Bill on Digital Competition Law” (Mar. 12, 2024),

<https://pib.gov.in/PressReleasePage.aspx?PRID=2013947>.

regulatory experiments. As of now, there is very limited international experience on the effects that these digital regulations might bring. For example, in reviewing relevant international experience, the Committee notes in the Report that both Houses of the U.S. Congress have approved twelve bills “to enhance the regulation of large digital platforms in digital markets in the United States,”<sup>5</sup> including the American Innovation and Choice Online Act,<sup>6</sup> the Ending Platform Monopolies Act,<sup>7</sup> and the Open App Markets Act.<sup>8</sup> Importantly, although these bills were introduced in 2021, they raised significant concerns regarding antitrust, content moderation, privacy, and national security,<sup>9</sup> and they have not been approved by the U.S. Congress and do not appear to have the political support to move forward during this Congress. Therefore, as the Committee is reviewing relevant developments in other jurisdictions, it is important to differentiate regulatory and legislative proposals from those that have actually been enacted. As such, it would be recommended for Indian policymakers to first gauge the effects of these international proposals and give some time for them, once actually enacted, to show if their benefits outweigh their very real costs on consumers and the economy.

## I. Key Considerations and Principles to Guide Regulatory Proposals

Global digitalization across several industries of the economy has provided consumers and businesses with tremendous benefits. Numerous studies have confirmed the many ways in which digital services and multi-sided business models create and stimulate competition in the economy.<sup>10</sup> Given the dynamic and innovative nature of digital markets, any proposed digital

<sup>5</sup> *Supra* n. 2, at 77.

<sup>6</sup> See United States Congress, “S.2992 - American Innovation and Choice Online Act” (2021), <https://www.congress.gov/bill/117th-congress/senate-bill/2992>.

<sup>7</sup> See United States Congress, “H.R.3825 - Ending Platform Monopolies Act” (2021), <https://www.congress.gov/bill/117th-congress/house-bill/3825#:~:text=This%20bill%20prohibits%20large%20online,or%20controlled%20by%20the%20platform.>

<sup>8</sup> See United States Congress, “S.2710 - Open App Markets Act” (2021), <https://www.congress.gov/bill/117th-congress/senate-bill/2710>.

<sup>9</sup> See, e.g., Mark Jamison, AEIdeas, “Open App Markets Act: A Misguided Approach That Could Stifle America” (Apr. 4, 2024), <https://www.aei.org/technology-and-innovation/open-app-markets-act-a-misguided-approach-that-could-stifle-america/>; Krisztian Katona, Project DisCo, “AICOA’s Data Security, Privacy, and Content Moderation Issues Call for Risk Assessment” (Jun. 7, 2022), <https://www.project-disco.org/privacy/060722-aicoas-data-security-privacy-and-content-moderation-issues-call-for-risk-assessment/>; Erik Hovenkamp, ProMarket, “Big Tech ‘Self-Preferencing’ Bills May Hurt—Not Help—Antitrust Reform” (Jun. 8, 2022), <https://www.promarket.org/2022/06/08/big-tech-self-preferencing-bills-may-hurt-not-help-antitrust-reform/>; Erik Hovenkamp, CPI Antitrust Chronicle, USC Class Research Paper, “Proposed Antitrust Reforms in Big Tech: What Do They Imply for Competition and Innovation?” (Jun. 7, 2022), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4127334](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4127334); Graham Dufault, ACT, The App Association, “The Antitrust Bills are Still Consumer Protection’s Worst Enemy” (May 11, 2023), <https://actonline.org/2023/05/11/the-antitrust-bills-are-still-consumer-protections-worst-enemy/>.

<sup>10</sup> See, e.g., European Commission, “Staff Working Document: Evaluation of the Vertical Block Exemption Regulation” (Sep. 8, 2020), at 32, <https://competition-policy.ec.europa.eu/public-consultations/2018->

regulation needs to consider the wider potential implications for businesses, consumers, innovation, and the broader economy.

Digital technology is diffusing across the entire economy in industries as diverse as advertising, agriculture, automotive, manufacturing, and retail. With the ongoing digitalization across the economy,<sup>11</sup> many industries have digital components and digital offerings that also compete with physical ones, including retail and telemedicine.<sup>12</sup> Businesses usually described as “digital” are companies that adopted early on the use of technology and digital tools across various industries. Thus, as the entire economy is moving towards digitalization, creating a different set of rules for digital companies could create asymmetric results in the market, leading to ambiguity and inconsistency.

Importantly, an overly burdensome and heavy-handed regulation for digital markets could significantly hinder innovation and economic growth. This should be a particularly important consideration for India and its thriving digital economy.<sup>13</sup> As a recent report shows,

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[vber\\_en#reference-documents](#) (“[A]lternative online distribution models such as online marketplaces have made it easier for retailers to access customers. By using these third-party platforms, small retailers may, with limited investments and effort, become visible to potential customers and sell products to a large customer base and in multiple Member States.”); Oxera, “How platforms create value for their users: implications for the Digital Markets Act” (May 12, 2021), at 34, <https://www.oxera.com/wp-content/uploads/2021/05/How-platforms-create-value.pdf> (“The bundling and tying of different features and services by a platform can boost the efficiency of a market by reducing transaction costs, increasing choice for consumers, and helping businesses to achieve scale economies.”).

<sup>11</sup> See, e.g., Sarah Robson and Tim Cowell, AVEVA, “The four pillars of a trusted industrial information infrastructure” (2023), [https://discover.aveva.com/paid-search-industrial-cloud-hybrid-saas/whitepaper-the-four-pillars-of-a-trusted-industrial-information-infrastructure?https://discover.aveva.com/paid-search-industrial-cloud-hybrid-saas/whitepaper-the-four-pillars-of-a-trusted-industrial-information-infrastructure&utm\\_term=industrial%20digitalization&utm\\_campaign=G\\_S\\_A\\_NA\\_All\\_Campaign\\_Solution\\_Cloud\\_Industrial%20Cloud%20Hybrid%20SaaS&utm\\_source=adwords&utm\\_medium=ppc&gad\\_source=1&gclid=Cj0KCQjwir2xBhC\\_ARIsAMTXk87r9vMQVFqoLl5eh0XMKGAY\\_cDwx6mfund3avCiupvdLEEQ0UbGRnAaAmYmEALw\\_wcB](https://discover.aveva.com/paid-search-industrial-cloud-hybrid-saas/whitepaper-the-four-pillars-of-a-trusted-industrial-information-infrastructure?https://discover.aveva.com/paid-search-industrial-cloud-hybrid-saas/whitepaper-the-four-pillars-of-a-trusted-industrial-information-infrastructure&utm_term=industrial%20digitalization&utm_campaign=G_S_A_NA_All_Campaign_Solution_Cloud_Industrial%20Cloud%20Hybrid%20SaaS&utm_source=adwords&utm_medium=ppc&gad_source=1&gclid=Cj0KCQjwir2xBhC_ARIsAMTXk87r9vMQVFqoLl5eh0XMKGAY_cDwx6mfund3avCiupvdLEEQ0UbGRnAaAmYmEALw_wcB); Yifat Perry, NetApp BlueXP, “Digital Transformation: Examples from 5 Industries” (Jun. 2022), <https://bluexp.netapp.com/blog/cvo-blg-digital-transformation-examples-from-5-industries>.

<sup>12</sup> Rosa Abrantes-Metz and Mame Maloney, CCIA Research Center, “Competitive Dynamics of Online and Brick-and-Mortar Retail Prices” (Aug. 2, 2022), <https://research.ccianet.org/reports/competitive-dynamics-online-brick-and-mortar-retail-prices/>; Trevor Wagener, Jeff Simpson, and David Kearns, Deloitte, InsightIQ, “Consumer Preferences Embrace a Mix of Physical and Digital” (Jan. 31, 2022), <https://ccianet.org/research/reports/consumer-preferences-embrace-mix-physical-digital-shopping/>; John Glaser and Kyle Zebley, Harvard Business Review, “It’s Time to Cement Telehealth’s Place in U.S. Health Care” (Jan. 20, 2023), <https://hbr.org/2023/01/its-time-to-cement-telehealths-place-in-u-s-health-care>; Prashant Gandhi, Somesh Khanna, and Sree Ramaswamy, Harvard Business Review, “Which Industries Are the Most Digital (and Why)?” (Apr. 1, 2016), <https://hbr.org/2016/04/a-chart-that-shows-which-industries-are-the-most-digital-and-why>.

<sup>13</sup> See, e.g., Alonso, C. T. Bhojwani, E. Hanedar, D. Prihardini, G. Una and K. Zhabska, “Stacking up the Benefits: Lessons from India’s digital journey,” IMF Working Paper No. 23/78, International Monetary Fund (2023), <https://www.imf.org/en/Publications/WP/Issues/2023/03/31/Stacking-up-the-Benefits-Lessons-from-Indias-Digital-Journey-531692>; InvestIndia, “Digital India: Revolutionising the Tech Landscape” (Feb. 15, 2024), [https://www.investindia.gov.in/team-india-blogs/digital-india-revolutionising-tech-landscape#:~:text=The%20foundation%20of%20India's%20digital,%2D22%20to%202025%2D26](https://www.investindia.gov.in/team-india-blogs/digital-india-revolutionising-tech-landscape#:~:text=The%20foundation%20of%20India's%20digital,%2D22%20to%202025%2D26;); Siddharth Dixit, World Bank, “India’s digital transformation could be a game-changer for economic development” (Jun. 20, 2023) <https://blogs.worldbank.org/en/developmenttalk/indias-digital-transformation-could-be-game-changer-economic-development>.

India is currently the world's third largest host for tech start-ups,<sup>14</sup> just behind China and the U.S., and raised \$18.2 billion in equity investments just in 2022.<sup>15</sup>

Another important point for policymakers to consider is that any proposed new regulation, if any would be needed, should be of general applicability at a principle-level, and not target particular companies imposing specific provisions against them.<sup>16</sup>

Policymakers should take into account that any regulatory proposal for digital markets will likely have a significant impact not only from a competition enforcement and policy perspective, but in other policy areas as well, such as data privacy, national security, cybersecurity, and intellectual property, with important ramifications for businesses operating in India. This interconnectedness of policy areas in the digital space requires a particularly careful calibration of any *ex-ante* regulatory considerations in this area.<sup>17</sup>

### **I.1. Policymakers Should Analyze the Costs and Benefits Before Implementing Any New Regulation**

Given the potentially significant economic impact of regulating digital markets, it is fundamental for policymakers to engage with stakeholders in the development of any new *ex-ante* regulatory framework. Introducing new regulations is not costless, especially given the dynamic and innovative nature of digital markets. As a result, the ultimate objective of any new regulatory framework should be to promote and stimulate competition and innovation.

As the Organisation for Economic Cooperation and Development (OECD) and the International Competition Network (ICN) have underscored, to ensure that the cost of any new regulation does not outweigh its benefits, it should allow clearly procompetitive or competitively benign conducts, and recognize justifications for legitimate protections.<sup>18</sup> Without appropriate

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<sup>14</sup> Nasscom, “Tech Start-up Report 2022-Rising Above Uncertainty: The 2022 Saga of Tech Start-ups” (Feb. 15, 2023), at 41, <https://community.nasscom.in/communities/nasscom-insights/nasscom-tech-start-report-2022-rising-above-uncertainty-2022-saga>; Business Standard, “India has world's third largest startup ecosystem: PM at Startup Mahakumbh” (Mar. 20, 2024), [https://www.business-standard.com/industry/news/india-has-world-s-third-largest-startup-ecosystem-pm-at-startup-mahakumbh-124032000287\\_1.html](https://www.business-standard.com/industry/news/india-has-world-s-third-largest-startup-ecosystem-pm-at-startup-mahakumbh-124032000287_1.html).

<sup>15</sup> *Id.*

<sup>16</sup> Julia Black, Martin Hopper, and Christa Band, Law and Financial Markets Review, “Making a success of Principles-based regulation” (2007), 1(3), at 192, <https://www.lse.ac.uk/law/people/academic-staff/julia-black/Documents/black5.pdf>.

<sup>17</sup> See, e.g., United Nations, Report of the UN Secretary-General's High-level Panel on Digital Cooperation, “The age of digital interdependence” (2019), at 6, <https://www.un.org/en/pdfs/DigitalCooperation-report-for%20web.pdf>; OECD, OECD Report to G-20 Finance Ministers, “Achieving Inclusive Growth in the Face of Digital Transformation and the Future of Work” (Mar. 19, 2018), [https://www.oecd.org/g20/OECD\\_Achieving%20inclusive%20growth%20in%20the%20face%20of%20FoW.pdf](https://www.oecd.org/g20/OECD_Achieving%20inclusive%20growth%20in%20the%20face%20of%20FoW.pdf).

<sup>18</sup> OECD, OECD Global Forum on Trade 2023, “Key Issues in Digital Trade” (Oct. 2023), at 13, <https://www.oecd.org/trade/OECD-key-issues-in-digital-trade.pdf>; ICN, ICN Advocacy Working Group, “Framework of Competition Assessment Regimes” (Apr. 2015),

safeguards, a regulation may harm Indian consumers and businesses, including small and medium-sized businesses (SMBs) that use and rely on digital services. Therefore, CCIA encourages Indian policymakers to analyze the potential impact of any *ex-ante* regulation and whether its benefits would outweigh its potential harms to the country's consumers, businesses, and economy.<sup>19</sup>

## I.2. Balancing Competition and Regulation in Digital Markets

Overly complex, intrusive, or broad regulatory regimes are likely to deter entry and investment from innovative companies.<sup>20</sup> Therefore, any *ex-ante* regulation should only be introduced to address particular market failures,<sup>21</sup> which is not the same as the mere existence of market power. Dynamic competition, which is particularly relevant in digital markets, comes forth as a natural way to resolve market failures by firms competing for the market and creating new and innovative products.<sup>22</sup> In this regard, a key consideration before proposing any *ex-ante* regulation is whether the existing enforcement and policy frameworks, including competition, consumer protection, and data privacy already provide more proportionate ways to achieve the desired outcomes. Importantly, the mere presence of a market failure does not equate the need for regulatory intervention. Proposed *ex-ante* regulatory frameworks should properly balance the competitive circumstances of the market and balance the policy priorities to determine, after a proper cost-benefit analysis, if regulation, with both its intended and unintended potential consequences in the economy, is the best way to address the potential market failures. Therefore, clarifying the expected outcomes of a proposed regulatory framework in advance is particularly important for consumers and businesses alike.

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[https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/09/AWG\\_FrameworkCompetitionAssessmentRegimes.pdf](https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/09/AWG_FrameworkCompetitionAssessmentRegimes.pdf); OECD, "Maintaining Competitive Conditions in the Era of Digitalization" (Jul. 2018), at 4, <https://www.oecd.org/g20/Maintaining-competitive-conditions-in-era-of-digitalisation-OECD.pdf>.

<sup>19</sup> See OECD, Regulatory Policy Outlook (2021), [https://www.oecd-ilibrary.org/governance/oecd-regulatory-policy-outlook-2021\\_38b0fdb1-en](https://www.oecd-ilibrary.org/governance/oecd-regulatory-policy-outlook-2021_38b0fdb1-en); OECD, Regulatory Impact Assessment (2020), <https://www.oecd.org/gov/regulatory-policy/regulatory-impact-assessment-7a9638cb-en.htm>.

<sup>20</sup> See, e.g., Aghion, Philippe and Bergeaud, Antonin and Van Reenen, John, "The Impact of Regulation on Innovation" (Jan. 16, 2023), Banque de France Working Paper No. 804, forthcoming, <https://ssrn.com/abstract=4325116>; Regulatory Reform and Innovation, OECD, <https://www.oecd.org/sti/inno/2102514.pdf>; "Regulation that enables innovation," William D. Eggers, Sam J Walsh, Carsten Joergensen and Pankaj Kamleshkumar Kishnani (Mar. 23, 2023), <https://www2.deloitte.com/us/en/insights/industry/public-sector/government-trends/2023/regulatory-agencies-and-innovation.html>.

<sup>21</sup> Jean Tirole, Concurrences, Analysis Group, "Summary of remarks by Jean Tirole" (Sep. 27, 2018), [https://www.analysisgroup.com/globalassets/uploadedimages/content/insights/ag\\_features/summary-of-remarks-by-jean-tirole\\_english.pdf](https://www.analysisgroup.com/globalassets/uploadedimages/content/insights/ag_features/summary-of-remarks-by-jean-tirole_english.pdf).

<sup>22</sup> Joseph A. Schumpeter, "Capitalism, Socialism, and Democracy," 81 (1942).

*Ex-ante* regulation for digital markets, in the absence of a specific market failure that requires correction, would hinder not only the growth of companies in the digital and connected markets, but it would also harm innovation and competition, and thereby the overall economy.<sup>23</sup> Hence, regulation of a specific sector of the economy should only be considered when there is evidence of a sector-specific market failure that harms competition.

In India’s case, the country’s competition authority, the Competition Commission of India (“CCI”) has the necessary tools to address potential competition concerns in digital markets. In addition to the cases closed and investigations started for alleged anticompetitive conducts,<sup>24</sup> CCI has significantly enhanced its capacity and tools to deal with digital economy participants by setting up a specialized digital markets and data unit (DMDU) in July 2023.<sup>25</sup> India has also implemented different legislative measures to regulate digital markets in addition to the Competition Law’s recent amendment.<sup>26</sup> These include, among others, the Digital Personal Data Protection Act<sup>27</sup> and the Information Technology Act.<sup>28</sup> As such, there is no indication that the authority faces any new market problem or concern that would require additional tools or rules to address.

It is worth noting that one of the key benefits of relying on strong *ex-post* frameworks, like the one present in India, is that they provide greater flexibility through a case-by-case analysis and fact specific analysis that can easily adapt to the evolving changes of market

<sup>23</sup> OECD, Directorate For Financial and Enterprise Affairs, Competition Committee, “Ex-Ante Regulation and Competition in Digital markets - Note by BIAC” (Dec. 2, 2021), at 4,

[https://one.oecd.org/document/DAF/COMP/WD\(2021\)79/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2021)79/en/pdf); Badri Narayanan and Hosuk Lee-Makiyama, ECIPE, Economic Costs of Ex-Ante Regulations” (Oct. 2020), [https://ecipe.org/wp-content/uploads/2020/10/ECI\\_20\\_OccPaper\\_07\\_2020\\_Ex-ante\\_Regulations\\_LY06.pdf](https://ecipe.org/wp-content/uploads/2020/10/ECI_20_OccPaper_07_2020_Ex-ante_Regulations_LY06.pdf); Fed. Trade Comm’n, Broadband Connectivity Competition Policy Staff Report 9 (Jun. 2007),

<https://www.ftc.gov/sites/default/files/documents/reports/broadband-connectivity-competition-policy/v070000report.pdf> (advising that “[i]n evaluating whether new proscriptions are necessary, we advise proceeding with caution before enacting broad, ex-ante restrictions in an unsettled, dynamic environment”).

<sup>24</sup> See, e.g., OECD, Directorate for Financial and Enterprise Affairs, Competition Committee, DAF/COMP/AR(2023)45, “Annual Report on Competition Policy Developments in India” (Sep. 5, 2023), Table 1, at 5, [https://one.oecd.org/document/DAF/COMP/AR\(2023\)45/en/pdf](https://one.oecd.org/document/DAF/COMP/AR(2023)45/en/pdf); Competition Commission of India, “Annual Report 2022-2023” (2023), at 16, Table B4, <https://www.cci.gov.in/public/images/annualreport/en/annual-report-2022-231703571209.pdf>.

<sup>25</sup> Ministry of Corporate Affairs, “60th Report of the Standing Committee on Finance”(Jul. 27, 2023), at 7, [https://eparlib.nic.in/bitstream/123456789/2505182/1/17\\_Finance\\_60.pdf#search=null%2017%20Committee%20on%20Finance](https://eparlib.nic.in/bitstream/123456789/2505182/1/17_Finance_60.pdf#search=null%2017%20Committee%20on%20Finance).

<sup>26</sup> Competition (Amendment) Act, 2023 (Apr. 2023), [https://prsindia.org/files/bills\\_acts/acts\\_parliament/2023/The%20Competition%20\(Amendment\)%20Act,%202023.pdf](https://prsindia.org/files/bills_acts/acts_parliament/2023/The%20Competition%20(Amendment)%20Act,%202023.pdf).

<sup>27</sup> Digital Personal Data Protection Act (Aug. 11, 2023), <https://www.meity.gov.in/writereaddata/files/Digital%20Personal%20Data%20Protection%20Act%202023.pdf>.

<sup>28</sup> Information Technology Act (Jun. 9, 2000), <https://eprocure.gov.in/cppp/rulesandprocs/kbadqkdclswfjdelrquehwuxcfmijmuixngudufgbuubgubfugbububjxcgfvsbdihbfgGhdfgFHtyhRtMjk4NzY=>.

dynamics, particularly in the digital era. On the contrary, *ex-ante* regulatory frameworks tend to be more rigid, which can prove to be a problem when wanting to adapt to constantly changing market dynamics.

The recommended focus of India’s policymakers, given the country’s blooming digital and start-up ecosystem, is to maintain an evidence-based approach to regulation to ensure that overregulation does not hinder innovation and investment in Indian digital markets.<sup>29</sup>

### I.3. Policymakers Should Be Cautious in Relying on Untested International Regulatory Experiments

*Ex-ante* digital regulatory proposals are currently being discussed and debated in several jurisdictions worldwide.<sup>30</sup> However, it is important to underscore how, so far, there are only two jurisdictions with fully operational *ex-ante* digital regulatory frameworks: Germany, through the 10th amendment of the German Competition Act (GWB)<sup>31</sup> and Section 19a of the GWB,<sup>32</sup> and the European Union’s (EU) Digital Markets Act (DMA),<sup>33</sup> which became fully operational in March 2024.<sup>34</sup> However, there is still a long road ahead before the concrete application of the DMA can be properly assessed, with significant litigation roadblocks in its path.<sup>35</sup> It is worth noting how the EU’s process took almost four years from the date of the initial proposal from the European Commission in December of 2020, until the application of obligations to gatekeepers

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<sup>29</sup> Nisha Kaur Uberoi, Harshita Parmar, Akrathi Shetty, Shivangi Chawla, Global Competition Review, “India: Nurturing Competition in a Rapidly Evolving Digital Space” (Dec. 8, 2023), <https://globalcompetitionreview.com/guide/digital-markets-guide/third-edition/article/india-nurturing-competition-in-rapidly-evolving-digital-space#footnote-000>.

<sup>30</sup> See, e.g., Center for Strategic and International Studies (CSIS), “Digital Competition Policy Tracker” (Apr. 2024), <https://www.csis.org/programs/scholl-chair-international-business/competition-policy-digital-era>.

<sup>31</sup> 10th Amendment to the German Competition Act (GWB), Federal Law Gazette Volume 2021 Part I No. 1, issued in Bonn on January 18, 2021, [https://www.bgbl.de/xaver/bgbl/start.xav#\\_bgbl\\_%2F%2F%5B%40attr\\_id%3D%27bgbl121s0002.pdf%27%5D1701266446605](https://www.bgbl.de/xaver/bgbl/start.xav#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl121s0002.pdf%27%5D1701266446605).

<sup>32</sup> *Id.*, Section 19a (“The Bundeskartellamt may issue a decision declaring that an undertaking which is active to a significant extent on markets within the meaning of Section 18(3a) is of paramount significance for competition across markets.”).

<sup>33</sup> Regulation (EU) 2022/1925 of The European Parliament and of The Council (Sep. 14, 2022), [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L\\_.2022.265.01.0001.01.ENG&toc=OJ%3AL%3A2022%3A265%3ATOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2022.265.01.0001.01.ENG&toc=OJ%3AL%3A2022%3A265%3ATOC).

<sup>34</sup> European Commission, News Announcement, “Designated gatekeepers must now comply with all obligations under the Digital Markets Act” (March 7, 2024), [https://digital-markets-act.ec.europa.eu/designated-gatekeepers-must-now-comply-all-obligations-under-digital-markets-act-2024-03-07\\_en](https://digital-markets-act.ec.europa.eu/designated-gatekeepers-must-now-comply-all-obligations-under-digital-markets-act-2024-03-07_en).

<sup>35</sup> See, e.g., Nicholas Hirst, MLex, “DMA litigation will be a different beast to antitrust appeals, Kramler says” (Sep. 14, 2023), <https://mlexmarketinsight.com/news/insight/dma-litigation-will-be-a-different-beast-to-antitrust-appeals-kramler-says>; Aymeric de Moncuit and Sarah Wilks, Mayer Brown, “The New EU Digital Regime: Already in Court” (Sep. 19, 2023), <https://www.mayerbrown.com/en/insights/publications/2023/09/the-new-eu-digital-regime-already-in-court>; Foo Yu Chee, Reuters, “Top EU judge expects a wave of litigation from tech giants against new tech law” (Mar. 17, 2023), <https://www.reuters.com/technology/top-eu-judge-expects-wave-litigation-tech-giants-against-new-tech-law-2023-03-17/>.

in March of 2024.<sup>36</sup> Given the extremely limited experience with these regulations,<sup>37</sup> policymakers in India and other countries will likely want to first learn from the experience in these jurisdictions and wait for more concrete results of those regulatory experiments. This, in turn, may help inform policymakers about whether these regulatory examples even end up providing the results for which they were originally crafted. Therefore, CCIA strongly recommends being cautious when relying on international regulatory experiments in this area. If an *ex-ante* approach were to be adopted, it would be recommended to allow sufficient time for stakeholder consultation and for designated companies to prepare themselves for compliance, a process that can take more than one year as seen in the European example.

Although digital reforms are being considered in various jurisdictions, there are no convergent proposals or results in sight. For example, as mentioned above, the U.S. antitrust bills targeting a handful of technology companies raised numerous major concerns and seem to have no political support to be adopted.<sup>38</sup> Brazil is discussing a similar DMA-like bill to regulate digital markets<sup>39</sup> which, following a public consultation period, is still pending deliberation and approval in Congress.<sup>40</sup> Other regulatory models around potential codes of conduct are being discussed in Australia and the United Kingdom.<sup>41</sup> Alternatively, they could potentially provide a more flexible and tailor-made regulation, which only time will tell.<sup>42</sup> Japan provides another international model with their so-called Transparency Act,<sup>43</sup> which stipulates that designated digital platforms take voluntary and proactive steps to ensure transparency and fairness under a so-called co-regulatory approach.

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<sup>36</sup> European Commission, “About the Digital Markets Act” (2024), [https://digital-markets-act.ec.europa.eu/about-dma\\_en](https://digital-markets-act.ec.europa.eu/about-dma_en).

<sup>37</sup> Germany’s GWB went into effect just over two years ago in 2021. The EU’s DMA became fully operational in March 2024.

<sup>38</sup> See, e.g., Krisztian Katona, Project DisCo, “AICOA’s Data Security, Privacy, and Content Moderation Issues Call for Risk Assessment” (Jun. 7, 2022), <https://www.project-disco.org/privacy/060722-aicoas-data-security-privacy-and-content-moderation-issues-call-for-risk-assessment/>; Project DisCo, “AICOA’s Failure and the Future of Competition Policy in Congress” (Jan. 6, 2023), <https://www.project-disco.org/competition/010623-aicoas-failure-and-the-future-of-competition-policy-in-congress/>.

<sup>39</sup> Congresso Nacional, Projeto de Lei No. 2768/2022, [https://www.camara.leg.br/proposicoesWeb/prop\\_mostrarintegra?codteor=2214237&filename=PL%202768/2022](https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=2214237&filename=PL%202768/2022).

<sup>40</sup> See CCIA, “CCIA Comments on Brazilian Bill No. 2768/2022” (Dec. 4, 2023), <https://ccianet.org/library/ccia-comments-on-brazilian-bill-no-2768-2022/>.

<sup>41</sup> See, e.g., CCIA, “CCIA Comments on the Australian Treasury’s Consultation Document on the Australian Competition and Consumer Commission’s Regulatory Reform Recommendations” (Feb. 17, 2023), <https://ccianet.org/wp-content/uploads/2023/02/CCIA-Comments-to-the-Australian-Treasury.pdf>; CCIA, “CCIA Comments on the United Kingdom’s “Digital Markets, Competition, and Consumer Bill”” (Jul. 18, 2023), <https://ccianet.org/wp-content/uploads/2023/07/CCIA-Comments-to-UK-Parliament-on-DMCC.pdf>.

<sup>42</sup> See “ACCC calls for new competition and consumer laws for digital platforms” (Nov. 11, 2022), <https://www.accc.gov.au/media-release/accc-calls-for-new-competition-and-consumer-laws-for-digital-platforms>.

<sup>43</sup> Act on Improving Transparency and Fairness of Digital Platforms, (Jun. 3, 2020), [https://www.meti.go.jp/english/policy/mono\\_info\\_service/information\\_economy/digital\\_platforms/index.html](https://www.meti.go.jp/english/policy/mono_info_service/information_economy/digital_platforms/index.html).



It is worth noting how each of these regulatory proposals came as an answer to specific regulatory concerns in the particular jurisdiction. It is important that policymakers considering *ex-ante* regulatory frameworks, particularly concerning digital markets, analyze the specific characteristics and necessities of their national markets.<sup>44</sup> Therefore, and based on the extremely limited experience with recent *ex-ante* regulatory proposals worldwide, CCIA recommends that Indian policymakers take a step back and analyze the potential effects of importing these international regulatory experiments. The recommended approach for countries analyzing these types of proposals would be to first allow some time to gauge how these international experiments are working in practice and then evaluate whether the reforms end up benefiting or harming consumers and innovation.<sup>45</sup>

## II. India's Digital Economy

In early 2023, India had an estimate of 692 million<sup>46</sup> internet users thanks to affordable data, and could potentially 900 million users by 2025.<sup>47</sup> Moreover, India's consumer-based digital economy is expected to represent an \$800 billion market by 2030.<sup>48</sup> Importantly, India had 751.5 million internet users in early 2024,<sup>49</sup> accounting for an internet penetration of 52.4 percent,<sup>50</sup> while the EU had an internet penetration of 92 percent in 2023,<sup>51</sup> and the UK had an internet penetration of 97.8 percent in early 2024.<sup>52</sup> This shows how, compared to other

<sup>44</sup> UNCTAD, eWeek 2023, "The Geneva Vision on the Future of the Digital Economy (2023), at 20, [https://unctad.org/system/files/information-document/GenevaVision\\_OutcomeUNCTADeWeek2023.pdf](https://unctad.org/system/files/information-document/GenevaVision_OutcomeUNCTADeWeek2023.pdf).

<sup>45</sup> See, e.g., "Interview with Alexandre Cordeiro Macedo, President, Administrative Council for Economic Defense (CADE)," Conducted by Krisztian Katona on behalf of the ABA Antitrust Magazine (Jun. 30, 2023), [https://www.americanbar.org/groups/antitrust\\_law/resources/source/2023-june/interview-with-alexandre-cordeiro-macedo/](https://www.americanbar.org/groups/antitrust_law/resources/source/2023-june/interview-with-alexandre-cordeiro-macedo/)

<sup>46</sup> Datareportal, "Digital 2023: India" (Feb. 13, 2023), <https://datareportal.com/reports/digital-2023-india>. . .

<sup>47</sup> The Hindu, "Over 50% Indians are active internet users now; base to reach 900 million by 2025: report" (May 4, 2023), <https://www.thehindu.com/news/national/over-50-indians-are-active-internet-users-now-base-to-reach-900-million-by-2025-report/article66809522.ece>.

<sup>48</sup> EY India, "India's consumer digital economy: A US \$800b opportunity by 2030" (Apr. 4, 2022), [https://www.ey.com/en\\_in/e-commerce/india-s-consumer-digital-economy-a-us-800b-dollar-opportunity-by-2030#:~:text=According%20to%20industry%20estimates%2C%20India's,investments%20in%20the%20year%202021](https://www.ey.com/en_in/e-commerce/india-s-consumer-digital-economy-a-us-800b-dollar-opportunity-by-2030#:~:text=According%20to%20industry%20estimates%2C%20India's,investments%20in%20the%20year%202021).

<sup>49</sup> Datareportal, "Digital 2024: India" (Feb. 21, 2024), <https://datareportal.com/reports/digital-2024-india#:~:text=Internet%20use%20in%20India%20in%202024&text=India's%20internet%20penetration%20rate%20stood,January%202023%20and%20January%202024>.

<sup>50</sup> *Id.*

<sup>51</sup> Eurostat, "Digital Economy and Society Statistics - Household and Individuals" (Apr. 2024), [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Digital\\_economy\\_and\\_society\\_statistics\\_-\\_households\\_and\\_individuals](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Digital_economy_and_society_statistics_-_households_and_individuals).

<sup>52</sup> Datareportal, "Digital 2024: The United Kingdom" (Feb. 21, 2024), <https://datareportal.com/reports/digital-2024-united-kingdom#:~:text=Kingdom%20in%202024-There%20were%2066.33%20million%20internet%20users%20in%20the%20United%20Kingdom,at%20the%20start%20of%202024>.

jurisdictions, the Indian digital market economy is still at a very early stage and needs to be fostered. As such, policies that work in other jurisdictions with more evolved digital economies might not be appropriate for India's ecosystem.

As for Small and Medium Businesses (SMBs), it can be argued that digital platforms help lower barriers to entry, allowing them to optimize resources.<sup>53</sup> For example, a recent study found that each dollar spent on online advertising produced \$3.31 in revenue (a 331 percent ROI).<sup>54</sup> These SMBs form the backbone of the Indian economy, they represented close to 29 percent of the GDP in 2023, and 43.6 percent of exports in FY23.<sup>55</sup>

These SMBs would be harmed by the restriction of the bill on Systemically Significant Digital Enterprises<sup>56</sup> (SSDEs), which would in turn significantly hinder India's economy and harm the over 350 million Indian internet consumers. Digitalization has enabled SMBs to establish a robust online presence, reach a wider consumer base, and reduce entry costs into established markets. As a result, SMBs have more resources to invest in innovation, leading to increased exports and the introduction of innovative products and services in other jurisdictions.<sup>57</sup>

### III. The Potential Impact of *Ex-Ante* Digital Regulation on the Indian Economy

The Bill, similarly to the EU's DMA, directly targets digital platforms that are designated as SSDEs that meet any of the financial thresholds set in the Bill for each of the immediately preceding three financial years,<sup>58</sup> and meet the established user thresholds<sup>59</sup> while providing a Core Digital Service<sup>60</sup> (CDS). The proposal will affect a large swath of Indian companies and

<sup>53</sup> Avi Goldfarb, Springer, *The Review of Industrial Organization*, "What is Different About Online Advertising?" (2024), 44(2), 115–129, <http://www.jstor.org/stable/43550450>.

<sup>54</sup> Steven Tadelis, Christopher Hooton, Utsav Manjeer, Daniel Deisenroth, Nils Wernerfelt, Nick Dadson, and Lindsay Greenbaum, University of California Berkeley, National Bureau of Economic Research, "Learning, Sophistication, and the Returns to Advertising: Implications for Differences in Firm Performance" (Apr. 2023), at 17, <https://faculty.haas.berkeley.edu/stadelis/Learning%20Sophistication%20Ads.pdf>.

<sup>55</sup> Ministry of Micro, Small & Medium Enterprises, Government of India, "Role of MSME Sector in the Country" (Aug. 7, 2023), <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1946375#:~:text=As%20per%20the%20latest%20informatio n,27.2%25%20and%2029.2%25%20respectively>.

<sup>56</sup> *Supra* n. 2 at 154.

<sup>57</sup> The Dialogue, "Competition Law in The Digital Age: Adapting to New Realities" (2023), at 12, <https://thediologue.co/wp-content/uploads/2023/08/Designed1008-EVENT-REPORT-Adating-to-new-realities1.pdf>.

<sup>58</sup> *Supra* n. 2 at 154 (Roughly US \$480 million turnover in India (INR 40,000,000,000); or US \$30 billion global turnover; or gross merchandise value in India of roughly \$1.9 billion (INR 160,000,000); or global market capitalization value of \$75 billion or its equivalent fair value of not less than \$75 billion).

<sup>59</sup> *Id.* (10,000,000 end users or 10,000 business users.).

<sup>60</sup> *Id.* at 191 (A "Core Digital Service" includes any of the following: (a) online search engines; (b) online social networking services; (c) video-sharing platform services; (d) interpersonal communications services; (e) operating systems; (f) web browsers; (g) cloud services; (h) advertising services; and (i) online intermediation services.).

the country's general economic activity, as up to 580 digital service and e-commerce companies operating in India could be designated as SSDEs under the Bill's DMA-style thresholds and would face significant compliance costs and barriers to introducing new services as a result.<sup>61</sup> These companies generate at least \$439.5 billion to \$1.6 trillion in revenue<sup>62</sup> and employ at least 1,429,223 to 2,345,158 workers.<sup>63</sup> These figures are limited to firms headquartered in India, so the impacts will be much larger for India's workforce once foreign firms operating in India that will likely be covered by the Bill are considered.

The impact of the Bill could also be even greater when considering the powers given to CCI to designate companies as SSDEs even when they fail to meet the established thresholds, as long as CCI considers that a particular company has a significant presence in a specific CDS.<sup>64</sup> These powers, as well as the broad definitions of "business users" and "online intermediation services," give a sense of unpredictability and ambiguity to the SSDE determinations of the bill. This lack of clarity can hinder business investment in India as companies need to have regulatory certainty before investing in the country.

*Ex-ante* regulations may have a major impact on consumers, entrepreneurs, and the broader economy. Studies have found that the policy debate around the EU DMA ignored competition and innovation models,<sup>65</sup> and how compliance costs for gatekeepers will increase between \$22 billion and \$50 billion.<sup>66</sup> If a similar *ex-ante* regulation were to be introduced in India, companies would likely invest less in their own R&D, leading to a decrease in innovation expenditure in the country. In turn, this would have larger spillover impacts on the economy, thereby hurting employment, wages, and productivity.<sup>67</sup>

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<sup>61</sup> Crunchbase data, see <https://www.crunchbase.com/>.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Supra* n. 2 at 154.

<sup>65</sup> See, e.g., "Implications of the Digital Markets Act for Transatlantic Cooperation," Center for Strategic and International Studies, Meredith Broadbent (Sep. 15, 2021), at 6, <https://www.csis.org/analysis/implications-digital-markets-act-transatlantic-cooperation>; "Is the Proposed Digital Markets Act the Cure for Europe's Platform Ills? Evidence from the European Commission's Impact Assessment," David J. Teece and Henry J. Kahwaty (Apr. 12, 2021), at 47, [https://media.thinkbrg.com/wp-content/uploads/2021/04/11215103/Is-the-DMA-the-Cure\\_Teece\\_Kahwaty.pdf](https://media.thinkbrg.com/wp-content/uploads/2021/04/11215103/Is-the-DMA-the-Cure_Teece_Kahwaty.pdf).

<sup>66</sup> Kati Suominen, CSIS Scholl Chair in International Business, Center for Strategic & International Studies, "Implications of the European Union's Digital Regulations on U.S. and EU Economic and Strategic Interests" (Nov. 2022), at 22, [https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/221122\\_EU\\_DigitalRegulations.pdf?VersionId=iuEI9KteAl\\_SKhjPCEWN8LlvqqORV02X](https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/221122_EU_DigitalRegulations.pdf?VersionId=iuEI9KteAl_SKhjPCEWN8LlvqqORV02X).

<sup>67</sup> "Is the Proposed Digital Markets Act the Cure for Europe's Platform Ills? Evidence from the European Commission's Impact Assessment," David J. Teece and Henry J. Kahwaty (Apr. 12, 2021), at 6, [https://media.thinkbrg.com/wp-content/uploads/2021/04/11215103/Is-the-DMA-the-Cure\\_Teece\\_Kahwaty.pdf](https://media.thinkbrg.com/wp-content/uploads/2021/04/11215103/Is-the-DMA-the-Cure_Teece_Kahwaty.pdf).

Looking further at the potential implications of the EU’s DMA, this legislation could cause an over-enforcement of competition laws by restricting a series of business practices (including bundling, tying, and self-preferencing, among others) that are commonly found both offline and online, and that have a generally positive economic and societal impact.<sup>68</sup> If India adopts a similar regulatory approach, it will risk over-enforcement and restriction of business practices that are often procompetitive or at least competitively benign.

Even when *ex-ante* digital regulations seek to target digital “Systemically Significant Digital Enterprises”<sup>69</sup> or “gatekeepers,”<sup>70</sup> these designations can spill over onto non-designated platforms, which increases the cost of false positives and overregulation in the digital economy.<sup>71</sup> A major concern for India’s economy is that, under the Bill’s provisions, any company that is dominant or in a position in which suppliers are economically dependent on it could be impacted by the significant *per se* rules of the Bill. If India adopts the proposed regulatory framework in its current form, the whole economy, not only digital companies, will be heavily impacted.

It is expected that the EU’s DMA might significantly threaten workers in some of the largest job-creating industries – technology and e-commerce.<sup>72</sup> If India were to adopt a similar regulatory approach, it could end up significantly hurting job growth in these important sectors and slow down the momentum of job creation, as workers in up to 580 companies headquartered in India could be directly impacted by the SSDE designation, with additional impacts felt throughout India’s economy and workforce at other digital companies not headquartered in India.<sup>73</sup> These companies would face enormous compliance challenges, decreasing their revenue and impacting at least 1,429,223 workers.<sup>74</sup>

Finally, a particularly important point that India and any other jurisdiction contemplating an *ex-ante* regulatory framework for digital markets should keep in mind is that there is global competition for technology investment. Companies want to operate in jurisdictions and economies with clear, fair, and principle-based regulatory environments, without extreme

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<sup>68</sup> See, e.g., “How platforms create value for their users: implications for the Digital Markets Act,” Felipe Florez Duncan, Oxera (May 12, 2021), <https://www.oxera.com/insights/reports/how-platforms-create-value/>.

<sup>69</sup> *Supra* n. 2 at 154.

<sup>70</sup> Gatekeepers, Digital Markets Act, European Commission, <https://digital-markets-act-cases.ec.europa.eu/gatekeepers>.

<sup>71</sup> See, e.g., “The DMA’s Risk to Non-Gatekeeper Platforms,” Kay Jebelli, Project DisCo (Mar. 11, 2022), <https://www.project-disco.org/european-union/031122-the-dmas-risk-to-non-gatekeeper-platforms/>.

<sup>72</sup> “ICYMI: Experts Say DMA Threatens Job Creation,” Project DisCo (Nov. 11, 2021), <https://www.project-disco.org/21st-century-trade/111121-experts-say-dma-threatens-job-creation/>; Aurelien Portuese, “The Digital Markets Act: A Triumph of Regulation Over Innovation,” ITIF (2022), [https://itif.org/publications/2022/08/24/digital-markets-act-a-triumph-of-regulation-over-innovation/#\\_edn7](https://itif.org/publications/2022/08/24/digital-markets-act-a-triumph-of-regulation-over-innovation/#_edn7).

<sup>73</sup> Crunchbase data, see <https://www.crunchbase.com/>.

<sup>74</sup> *Id.*

regulatory obligations and paying excessive expenses to operate.<sup>75</sup> This is particularly important for the global export competitiveness of Indian companies as well. The important question from a business perspective is – how does India want to position itself in this global competition for investment?<sup>76</sup> What kind of national regulatory framework does it want to provide for international companies? After all, before regulating competition, a country needs to attract it. This has a greater significance when we consider the so-called China Plus One<sup>77</sup> shift and how companies are looking to lower their supply chain risks by moving their production operations from China to other countries, creating a great investment opportunity for the countries that would receive said operations.

#### IV. The Bill’s Low Designation Thresholds Would Create Higher Barriers to Entry and Hinder Competition

As mentioned above, the Bill’s thresholds would cover at least 580 companies operating in India as SSDEs, just from the digital service and e-commerce sector. A major difference from the EU’s DMA is that, under the DMA, only six companies were initially designated as “gatekeepers.”<sup>78</sup> As a result of the Bill, this very large number of designated companies would end up facing significant compliance burdens and barriers to introducing new services.<sup>79</sup>

When designing regulatory proposals, it is imperative that legislators and policymakers have a clear reasoning for designating certain companies as “SSDEs” or “gatekeepers” (under the DMA) and understanding the potential consequences of requiring these companies to comply

<sup>75</sup> See, e.g., Christian M. Dippon and Matthew D. Hoell, NERA Economic Consulting, CCIA Research Center, “A Quantitative Evaluation: The Economic Costs of Structural Separation, Line of Business Restrictions, and Common Carrier Regulation of Online Platforms and Marketplaces,” (Mar. 18, 2022), <https://research.ccianet.org/reports/economic-costs-regulation-online-platforms-marketplaces/#main-content>; Engine and CCIA Research Center, “Tools to Compete Lower Costs, More Resources, and the Symbiosis of the Tech Ecosystem” (Jan. 25, 2023), <https://research.ccianet.org/reports/tools-to-compete/#main-content>.

<sup>76</sup> See Government of India, Invest India, “Why India?” (2024), <https://www.investindia.gov.in/why-india> (India ranked 40th on the Global Competitive Index 2023 and had a total FDI inflow of \$971.521 billion in FY 2023-24.).

<sup>77</sup> Dimerco, “The Logistics of China Plus One” (2024), <https://dimerco.com/resources/the-logistics-of-china-plus-one/#:~:text=other%20Asian%20countries,-.What%20is%20China%20Plus%20One%3F,production%20operations%20to%20other%20countries>; Z2 Data, Insights, “Everything You Need to Know About China Plus One” (Aug. 25, 2023), <https://www.z2data.com/insights/everything-you-need-to-know-about-china-plus-one>.

<sup>78</sup> See “Digital Markets Act: Commission designates six gatekeepers” (Sep. 6, 2023), [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_23\\_4328](https://ec.europa.eu/commission/presscorner/detail/en/IP_23_4328).

<sup>79</sup> See, e.g., Mike Masnick, “The Unintended Consequences of Internet Regulation” (Apr. 12, 2023), <https://research.ccianet.org/reports/unintended-consequences-of-internet-regulation/>; CCIA, “Submission to European Commission’s public consultation on the template for compliance report under the DMA” (Jul. 2023), <https://ccianet.org/wp-content/uploads/2023/07/CCIA-Europe-submission-to-EC-public-consultation-on-the-template-for-compliance-report-under-the-DMA.pdf>.

with significantly increased regulatory burdens and requirements.<sup>80</sup> As such, it is crucially important to consider the significant ramifications designating such a high number of companies as SSDEs would mean for India’s digital and innovation ecosystem.

The Bill’s low threshold for the designation as an SSDE provides an overly broad applicability of the regulation to a significant number of companies with vastly different business models, which would not only affect incumbent companies but further increase barriers of entry for potential competitors. The resulting higher compliance costs under the Bill would not only reduce the high investment in research and innovation (R&D) in the country’s digital markets,<sup>81</sup> but this regulation would also increase the barriers of entry and reduce the appeal for start-ups to invest in these markets.

When designing these regulations, Indian policymakers should pay careful attention to the business realities of the country’s digital markets and analyze whether, on the one hand, the reasons behind designating “gatekeepers” in other jurisdictions apply to the country’s digital markets; and, on the other hand, whether adding very significant regulatory burdens to a large number of technology, digital services, and e-commerce companies would truly benefit India’s consumers, innovation, and economy.

CCIA recommends a clarification of the concept of “SSDEs” and a review of the thresholds for this designation.<sup>82</sup> A detailed analysis of each one of the markets, products, and services is needed for an evidence-based determination of which undertakings would be designated as SSDEs, and why these undertakings should be subject to significantly more regulation than others also participating in the same markets.

## V. Conclusion

Before contemplating *ex-ante* regulation for digital markets, Indian policymakers should first assess if there are actual market issues that require regulation. Further, even if there is a market issue that calls for regulation, legislators and policymakers should consider the costs and benefits of a proposed regulation and its potentially significant impact on investment, innovation, and competition. This is particularly important for India, a major leader in technology

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<sup>80</sup> See, e.g., Lazar Radic, Truth on the Market, “Gatekeeping, the DMA, and the Future of Competition Regulation” (Nov. 8, 2023), <https://truthonthemarket.com/2023/11/08/gatekeeping-the-dma-and-the-future-of-competition-regulation/>.

<sup>81</sup> See, e.g., Mint, “The Cost of Ex-ante Regulation of India's Digital Markets” (Mar. 9, 2024), <https://www.livemint.com/opinion/online-views/the-cost-of-ex-ante-regulation-of-india-s-digital-markets-11709969007481.html>.

<sup>82</sup> *Supra* n. 2 at 154.



investment and development worldwide. Therefore, the role for India's policymakers remains to ensure that the country's competition regime and regulatory framework are fit for purpose and support the domestic economy, promote innovation, and deliver benefits to Indian consumers.

CCIA is pleased to provide this input and looks forward to continuing to engage on this important proposal with the Ministry.

Respectfully submitted,

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