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India's Digital Competition Bill

Introduction and Summary

India's Ministry of Corporate Affairs (MCA) is advancing a revised version of its Draft Digital Competition Bill (DCB), an *ex-ante* regulatory framework modeled on the European Union's Digital Markets Act (DMA), the United Kingdom's Digital Markets, Competition and Consumers Act (DMCC), and Japan's Mobile Software Competition Act (MSCA).[1] The DCB would empower the Competition Commission of India (CCI) to designate firms as "Systemically Significant Digital Enterprises" (SSDEs) based on quantitative and qualitative thresholds, and to impose on those firms a set of prescriptive, conduct-based obligations, including bans on self-preferencing and tying, data-use restrictions, and mandated interoperability. These obligations would be enforced *ex ante* rather than on the basis of demonstrated anticompetitive harm.

India first proposed an *ex-ante* digital regulatory framework in 2024.[2] Following extensive stakeholder pushback, the government shelved the proposal and committed to first conduct a market study to assess whether an *ex-ante* regime was, in fact, warranted.[3] However, recent developments indicate the government has since shifted its stance. Public reporting and stakeholder questionnaires now circulated by the Indian government suggest the study has moved from asking *whether* such a regime is justified to *how* it should be implemented, focusing on where to set the thresholds that determine which firms are designated.[4] A draft bill could emerge as early as the Indian legislature's Winter Session (December 2026) or Budget Session (February 2027).

Most significantly, and unlike the 2024 draft, the recalibration now under consideration appears designed to capture foreign, primarily U.S. firms, while excluding India's own digital platforms. The 2024 draft relied on facially neutral quantitative thresholds, supplemented by a separate qualitative designation route that gave CCI authority to designate firms falling below those thresholds. This designation approach could have potentially included major domestic players. However, the current exercise is reported as an effort to set "fresh thresholds" that shield Indian platforms such as Zomato, Swiggy, Flipkart, Ola, Oyo, and Paytm while targeting primarily U.S. companies. As currently framed, a successor to the DCB would likely be even more discriminatory in effect than its predecessor, raising serious national treatment and market access concerns and functioning as a *de facto* barrier to digital trade.

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[1] Comparator frameworks: Regulation (EU) 2022/1925 (Digital Markets Act): https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R1925; UK Digital Markets, Competition and Consumers Act 2024: https://www.legislation.gov.uk/ukpga/2024/13/contents; Japan, Act on Promotion of Competition for Specified Smartphone Software (Mobile Software Competition Act) — JFTC outline: https://www.jftc.go.jp/file/240612EN3.pdf
[2] Official bill text: https://www.mca.gov.in/bin/dms/getdocument?mds=gzGtvSkE3zIVhAuBe2pbow%253D%253D&type=open. See also, CCIA's 2024 comments: https://ccianet.org/wp-content/uploads/2024/05/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.pdf.
[3] https://www.financialexpress.com/business/industry-govt-to-withdraw-draft-digital-competition-bill-3942328/.
[4] https://www.financialexpress.com/business/news/digital-competition-regulation-to-target-only-big-tech/4302951/.

Background

India's government established the Committee on Digital Competition Law in February 2023, with the intent to examine the need for an *ex-ante* digital regulatory framework.[5] The DCB was first proposed by the Committee on Digital Competition Law and released in draft form in February 2024.[6] The original draft adopted a nationality-neutral approach and prescribed objective financial and user thresholds for identifying SSDEs. It also identified nine Core Digital Services (CDS) in its list of targeted areas: online search engines; online social networking services; video-sharing platform services; interpersonal communication services; operating systems; web browsers; cloud services; advertising services; and online intermediation services.

The 2024 draft drew opposition from global and domestic technology companies alike. Notably, several Indian digital platforms, including Zomato, Swiggy, and Oyo, argued that *ex-ante* regulation would curb innovation and increase compliance costs, underscoring that the relevant divide was between digital incumbents and challengers rather than between foreign and Indian firms.[7] Experts also criticized the thresholds as too low and over-inclusive, warning they could capture even some Indian startups.[8]

In response, the MCA commissioned a market study, conducted by the Management Development Institute (MDI) Gurgaon, to gather stakeholder input.[9] The study began in mid-2026 and is expected to conclude around October 2026. On its face, a market study of this kind could serve a legitimate evidentiary purpose. In practice, however, the questionnaires circulated to stakeholders devote significant attention to *reviewing and recalibrating* the quantitative and qualitative thresholds for designating SSDEs, asking respondents to propose alternative benchmark levels and additional qualitative parameters, while devoting little attention to the antecedent question of whether an *ex-ante* regime is warranted at all. Indian officials have indicated that the government remains inclined to retain the core *ex-ante* framework and is using the study to calibrate its scope, reportedly aimed at ensuring the law mainly covers global technology giants while excluding most domestic digital companies.[10]

Recalibration of Designation Thresholds

The direction of the market study is best illustrated by comparing the objective thresholds in the 2024 draft against the higher ranges now being tested with stakeholders. Raising the thresholds narrows the designated set toward the largest, predominantly U.S. firms and lifts domestic platforms out of scope (1 crore = 10 million; ₹1,000 crore ≈ $120 million).

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[5] https://www.tandfonline.com/doi/full/10.1080/24730580.2025.2506958#abstract.
[6] Ministry of Corporate Affairs, Government of India, *Report of the Committee on Digital Competition Law* (Feb. 27, 2024), at 151, https://www.mca.gov.in/bin/dms/getdocument?mds=gzGtvSkE3zIVhAuBe2pbow%253D%253D&type=open.
[7] https://economictimes.indiatimes.com/tech/technology/digital-competition-law-large-internet-firms-not-in-favour-of-ex-ante-regulations/articleshow/108466886.cms.
[8] https://www.business-standard.com/industry/news/digital-competition-bill-google-zomato-explained-126072800500_1.html
[9] https://www.medianama.com/wp-content/uploads/2025/11/RFP-20251104.pdf.
[10] https://epaper.financialexpress.com/4180414/Delhi/July-27-2026.

Designation Criteria	2024 Draft Threshold	Ranges now under review in the market study
India turnover	> ₹4,000 crore ($480 million)	₹5,000 crore ($600 million) up to ₹30,000-50,000 crore ($3.6 billion - $6 billion)
Global turnover	> $30 billion	Retained as a global-scale filter
Global market capitalization	≥ $75 billion	Retained as a global-scale filter
Gross merchandise value (India)	> ₹16,000 crore ($1.92 billion)	₹16,000 crore ($1.92 billion) up to ₹75,000 crore-₹100,000 crore ($9 billion-$12 billion)
End users (India)	≥ 10 million (1 crore)	1 crore (10 million) up to 25–50 crore (250-500 million)
Business users (India)	≥ 10,000	1 crore up to 25–50 crore

The consistent upward pressure across every metric, paired with reporting that the exercise is intended to "shield Indian platforms," indicates a scope tailored to the firms the government wishes to target, rather than to any demonstrated competition problem.

Key Concerns with the Digital Competition Bill

Discriminatory design targeting U.S. firms

The most acute concern is that the thresholds now under consideration appear to be tailored specifically to capture foreign, primarily U.S. firms while excluding comparably situated Indian platforms. This is a marked evolution from the 2024 draft's nationality-neutral design. Calibrating designation criteria to shield domestic champions while reaching foreign competitors offering like services is a textbook *de facto* barrier to trade. It raises potential national treatment and market access concerns under applicable GATS commitments[11] and stands in tension with the trade agreement the United States and India are actively negotiating,[12] even as the U.S. firms likely in scope are actively investing billions in India's manufacturing, cloud, and AI sectors.[13]

An *ex-ante* model that departs from harm-based enforcement

Similar to the EU's DMA, the DCB would impose firm-specific conduct obligations on designated entities regardless of any finding of market power, abuse, or likely anticompetitive effect in a given case. India already has a robust *ex-post*, effects-based competition

[11] https://www.wto.org/english/docs_e/legal_e/gats_e.htm#art17.
[12] https://www.whitehouse.gov/briefings-statements/2026/02/united-states-india-joint-statement.
[13] https://www.bbc.com/news/articles/cx27yze8p0jo and https://manufacturing-today.com/news/apple-moves-quarter-of-iphone-production-to-india-as-exports-surge/

enforcement regime under the Competition Act, 2002,[14] which allows the CCI to investigate and remedy abuse of dominance based on evidence and a demonstrated theory of harm. Layering a prescriptive *ex-ante* regime on top of that framework would abandon the principle that regulation should address specific, evidenced harms, and it would create a two-tiered regulatory environment in which a narrow set of designated firms would be subject to obligations their direct competitors are not.

Threshold-based designation is a poor proxy for market power

The contemplated approach of using threshold-based criteria to designate firms would likely fail to achieve its desired objectives. First, quantitative thresholds based on global revenue and market-capitalization are a poor measure of market power: they risk capturing large, innovative firms that have not demonstrated market harms, while failing to scope in lower-turnover firms may still distort digital markets. Second, it risks capturing firms based on market success alone, deterring innovation and investment.

Prescriptive conduct obligations that penalize procompetitive practices

The DCB's contemplated obligations track the DMA's list: prohibitions on self-preferencing and tying; restrictions on the use of non-public business-user data; anti-steering and multi-homing requirements; and mandating data portability and interoperability. Many of these practices frequently generate substantial procompetitive benefits, including lower costs, improved security, and better user experiences.[15] Treating them as presumptively unlawful when undertaken by designated firms risks penalizing ordinary, efficiency-enhancing conduct, rather than seeking to address demonstrable anticompetitive harm.

Security, privacy, and innovation costs of forced data access and interoperability

Mandated data-sharing and interoperability obligations can force disclosure of proprietary information and sensitive user data, expose users to security and privacy risks, and require costly technical redesigns.[16] The EU experience with analogous DMA obligations demonstrates significant compliance burdens and delayed or withheld feature launches, with little demonstrated improvement in market contestability; burdensome and ineffective at once, while disadvantageous to U.S. suppliers relative to competitors not subject to the same rules.[17]

Absence of an efficiency or justification defense

A key concern regarding any *ex-ante* digital regulatory regime is when they deny designated firms a meaningful opportunity to demonstrate that challenged conduct produces procompetitive efficiencies that outweigh potential harms, diverging from India's own consumer-welfare-oriented antitrust tradition and heightening the risk of overdeterrence. This concern is especially acute where obligations could prevent firms from demonstrating that a particular design choice or restriction is justified by privacy, security, safety, or other procompetitive efficiencies.

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[14] https://www.indiacode.nic.in/bitstream/123456789/2010/7/A2003-12.pdf.
[15] https://www.oxera.com/insights/reports/how-platforms-create-value/.
[16] https://www.csis.org/analysis/new-costs-and-cybersecurity-challenges-flagged-dma-compliance-starts.
[17] https://trustedfuture.org/when-interoperability-mandates-weaken-security-jit-happens/.

Regulatory fragmentation and legal uncertainty

Adding an *ex-ante* layer administered by the CCI, on top of existing merger control and abuse of dominance enforcement, expands regulatory discretion, increases compliance costs, and creates uncertainty for firms operating across sectors where digital tools are now pervasive. It therefore risks chilling innovation and deterring foreign investment at a time when India is otherwise seeking to simplify regulation and deepen supply-chain partnerships.

Conclusion

India's existing Competition Act of 2002 already provides a balanced, evidence-based enforcement framework, anchored in demonstrated harm and procedural safeguards, that is well suited to addressing genuine competition concerns in digital markets. The revised DCB, by contrast, would repeat the mistakes of the EU's DMA and import a rigid *ex-ante* model whose thresholds now appear calibrated to shield domestic platforms while targeting foreign, primarily U.S. firms. That discriminatory design, layered onto prescriptive obligations that risk penalizing procompetitive conduct and raising security and privacy costs, would deter investment, chill innovation, and function as a *de facto* barrier to digital trade. Because the market study is expected to conclude around October 2026 and a draft bill could follow as soon as December 2026, this is a timely and important issue for USG engagement with Indian counterparts.