

Committee Report Summary

Digital Competition Law

- The Committee on Digital Competition Law was constituted to evaluate the need for an ex-ante competition framework for digital markets in India. In its report, the Committee also published a draft Bill to give effect to its recommendations. The report was released on March 12, 2024. Key observations and recommendations of the Committee include:
 - **Need for ex-ante regulation of digital competition:** The Committee noted that the current ex-post framework (intervening after an event occurs) under the Competition Act, 2002, does not facilitate timely redressal of anti-competitive conduct by digital enterprises. It observed that the present framework may not be effective to address the irreversible tipping of markets in favour of large digital enterprises (permanent dominance of a firm in relevant market). The Committee recommended enacting the Digital Competition Act to enable the Competition Commission of India (CCI) to selectively regulate large digital enterprises in an ex-ante manner (intervening before an event occurs). The proposed legislation should regulate only those enterprises that have a significant presence and the ability to influence Indian digital market.
 - **Systemically Significant Digital Enterprises (SSDEs):** The Committee noted that certain features of digital markets allow digital enterprises to swiftly gain influence. These features include: (i) collection of user data which can allow large incumbent enterprises to enter related markets, (ii) network effects where utility of a service increases when number of users consuming the service increases, and (iii) economies of scale wherein incumbents can offer digital services at lower costs as compared to new entrants. The Committee recommended designating entities offering certain core digital services as SSDEs for ex-ante regulation, which are susceptible to market concentration. These include search engines, social networking services, operating systems, and web browsers.
 - **Thresholds for classification of SSDEs:** The Committee recommended using both quantitative thresholds and qualitative criteria to designate enterprises as SSDEs. The quantitative threshold can be based on a dual test of: (i) significant financial strength, gauged from parameters such as turnover, gross merchandise value, and market capitalisation and (ii) significant spread based on the number of business and end users of the core digital service in India. Digital enterprises fulfilling the quantitative thresholds would have to report the same to CCI, which will then designate them as SSDEs. The quantitative threshold may not cover all digital enterprises that may have a significant presence in Indian digital markets. The Committee recommended that a set of qualitative criteria may be used to designate such enterprises as SSDEs. These criteria include resources of the enterprise and volume of data aggregated by them.
 - **Associate Digital Enterprises (ADEs):** The Committee noted that in some cases, compliance may be required from multiple digital enterprises in a group that are engaged in providing a core digital service. The Committee recommended that notifying enterprises should identify all other enterprises within its group involved in the provision of a core digital service. These enterprises should be designated as ADEs under the proposed framework.
 - **Obligations of SSDEs:** The draft Digital Competition Bill, 2024, as recommended by the Committee, prohibits SSDEs from carrying out certain practices. These include: (i) favouring their own products and services or those of related parties, (ii) use non-public data of business users operating on their core digital service to compete with those users, (iii) restrict users from using third-party applications on their core digital services, and (iv) requiring or incentivising users of an identified core digital service to use other products or services offered by the SSDE. Regulations may allow differential obligations for different SSDEs and ADEs based on factors like business models and user base.
 - **Enforcement of provisions:** The draft Bill empowers the Director General, appointed under the 2002 Act, to investigate any contraventions when directed by the CCI. The Committee recommended that CCI should bolster its technical capacity including within the Director General's office for early detection and disposal of cases. It also recommended constituting a separate bench of the National Company Law Appellate Tribunal for timely disposal of appeals.
 - **Penalties:** The 2002 Act provides for behavioural remedies and high monetary penalties to address anti-competitive practices. The Committee noted that the central government has decriminalised various corporate offences to promote ease of doing business. It recommended that contraventions under the draft Bill should be addressed by imposing civil penalties. For calculating the ceiling on penalties, the Committee recommended the use of global turnover of enterprises. The Committee also recommended capping the penalty at 10% of global turnover of SSDEs.

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