

Summary of Comments to the Draft Digital Competition Bill, 2024

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¹ This is a summary of our detailed submission. *Comments to the Draft Digital Competition Bill, 2024*, Nayyar, A., Suri, I., and Bedi, P., The Centre for Internet and Society, 2024, available [here](#)

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This document summarises comments made by the Centre for Internet and Society India (CIS) to the draft Digital Competition Bill, 2024, (hereafter “**draft DCB**” or “**draft Bill**”), published by the Committee on Digital Competition Law (CDCL).² In our [detailed submission](#) to the Committee, we affirm the CDCL’s decision to transition from a predominantly *ex-post* to an *ex-ante* approach for regulating competition in digital markets.³ However, we do so with the caveat that this requires the Competition Commission of India (CCI) to significantly increase its current capacity. In addition to this overarching concern, our submission provides inputs to the following six (6) key themes of the draft DCB:

1. **Classification of Core Digital Services I:** While we second the Committee’s choice of core digital services under Schedule I of the draft Bill, the absence of ‘virtual assistants’ (VAs) is left unexplained. The concentrated power of a few platforms in the VA market indicates that data-driven network effects and an early mover advantage allow entities to ‘gatekeep’ information and control the visibility of their competitors.⁴ ⁵ Consequently, **we submit that the Committee includes ‘VAs’ as a Core Digital Service in Schedule I to make the draft DCB more comprehensive and in line with existing and emerging evidence.**
2. **Designation of an SSDE and ADE:** Identifying Systemically Significant Digital Enterprises (SSDEs) requires identifying and narrowly defining relevant threshold categories and values. To this end, we submit that the MCA must
 - i. **Elaborate on the definition and composition of ‘business users’, under Section 2:** In its current form, the draft DCB does not explicitly define ‘business users’, thereby leaving it unclear whether groups like platform gig workers are also expected to be included under the same
 - ii. **Clarify the process for delineation of the GMV threshold values, under Section 3:** Although the CDCL report shares some rationale behind threshold values for ‘Turnover in India’, ‘Global Turnover’, and ‘Global Market Capitalisation’, it does not provide a similar explanation for ‘Gross Merchandise Value’ (GMV)
 - iii. **Empower CCI to designate quantitative thresholds at a sectoral level:** Given the variation in the structures and operating models of different Core Digital Services, prescribing identical threshold values for all of them could potentially miss dominant digital entities in one or more of the core digital services, exacerbating risks of under-enforcement
3. **Chapter III Obligations on SSDEs and ADEs:** Sections 7(3) and 7(5) of the draft DCB leaves it up to the CCI to design specific regulations for each core digital service. However, to ensure that the draft Bill’s vagueness does not hinder the law’s implementation, **the Committee must conduct a time-bound consultation process and ensure that specific obligations are included in the primary legislation, not subordinate instruments. We also submit that the scope of Section 10 be defined and clarified by the Committee,**

² *Report of the Committee on Digital Competition Law*, Ministry of Corporate Affairs, Government of India, 2024, available [here](#)

³ *Comments to the Draft Digital Competition Bill, 2024*, Nayyar, A., Suri, I., and Bedi, P., The Centre for Internet and Society, 2024, available [here](#)

⁴ *Is Your Digital Assistant Devious?*, UTK Law Faculty Publications, 2016, available [here](#)

⁵ *Bridging differing perspectives on technological platforms: Toward an integrative framework*, 2010, available [here](#)

particularly because it relies on widely defined terms like ‘fair’ and ‘transparent’.

Lastly, we write about the draft DCB’s reliance on the Digital Personal Data Protection Act (DPDPA) while defining ‘consent’ for users. More specifically, we highlight how the DPDPA’s weak notice requirements and limited focus on deceptive design practices could hinder digital competition regulation. To this end, we submit that **the Committee i) define consent for business users within the draft DCB and ensure that this definition is consistent with the DPDPA, and ii) incorporate a definition of consent for end users that addresses concerns around dark patterns and coercion.**

4. **Power of the Commission to Conduct an Inquiry:** Section 26 of the draft Bill empowers CCI to inquire into potential anti-competitive conduct outside India. However, given the capacity constraints faced by the Commission, **we submit that the CDCL lays down a set of guidelines for CCI to bridge the staffing and subject matter expertise gap required to execute this function.**

Moreover, Section 30 of the draft DCB sets a limitation period of three years for the Commission to initiate an inquiry, but the reason for this clause is not stated clearly. Consequently, **we request the Committee to provide a detailed and, wherever possible, evidence-based rationale for introducing Section 30 in the draft DCB.**

5. **Penalties and Appeals:** Similar to the extant Competition Act, the draft DCB relies predominantly on civil penalties as a deterrent. In our submission, we point towards the lack of evidence that monetary fines – by themselves or of the quantum chosen by the Committee (10%) – deter anti-competitive conduct. Subsequently, we highlight that despite the absence of evidence to suggest their deterrent impact, the draft Bill relies predominantly on monetary penalties.

Therefore, we recommend supplementing civil monetary penalties with behavioural and structural remedies. We also recommend imposing higher penalties or a limited-period ban on the relevant SSDEs where systemic non-compliance has been observed.

6. **Powers of the Central Government:** Section 39 (1) of the draft Bill empowers the Central government to issue directions and the Commission is bound by such directions on questions of policy. This is similar to the provision under the extant Competition Act but with one important difference: the latter prevents the central government from overriding the Commission on policy decisions regarding technical and administrative matters. **Consequently, the committee must reproduce the necessary caveat from Section 55(1) of the Competition Act, 2002 in the draft DCB.**

Additionally, we would also like to highlight three important areas that were omitted from the draft Bill and the accompanying Report of the Committee on Digital Competition Law:

- i. **Limited Consultations with Business Users and End Users:** The draft Bill relies disproportionately on the representations made by digital enterprises: for instance according to the stakeholder list published in the report, nearly 20 of the 29 stakeholders were representatives of technology startups, BigTech firms, and industry bodies. **We submit that the Committee conduct extensive and open consultations with platform gig**

workers, MSMEs, unorganised enterprises, and consumer welfare organisations to ensure all important stakeholders are represented and diverse perspectives are accommodated.

- ii. **Exclusion of M&A review:** The Parliamentary Standing Committee (PSC) identified Mergers and Acquisitions as one of the ten Anti-Competitive Practices (ACPs) in digital markets, owing to the ability of dominant players to stifle dynamic innovation by acquiring potential competitors and not innovating. However, despite conventional merger reviews failing to account for newer – and more effective – theories of harm, the CDCL does not deal with the issue of anti-competitive mergers under the scope of the draft DCB at all. Therefore, **we submit that the Committee must include the notification of digital mergers under the draft Bill, or publish detailed guidelines for mergers and acquisitions in the digital sector based on more contemporary theories of harm.**
- iii. **Lack of a framework for inter-regulatory coordination:** With CDCL acknowledging the prominent role of data in antitrust enforcement, there is bound to be a significant overlap between different regulatory bodies in India, particularly between the Data Protection Board and CCI. The Commission’s 2021 Market Study on the Telecom Sector also noted a similar relationship between TRAI and CCI but there has been no effort to formalise a framework to streamline inter-regulatory operations. Therefore, **we recommend establishing formal guidelines for coordination between different regulators dealing with digital regulation in India.**