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INTERSECTION OF COMPETITION REGULATION AND DATA PROTECTION

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ABSTRACT

The emergence of the digital economy has transformed how markets function, with data becoming a pivotal asset for businesses, consumers, and regulators. Large technology firms' unprecedented collection and use of consumer data have raised complex regulatory challenges, necessitating a cohesive framework that balances competition law with data protection. While competition law aims to ensure fair market practices and prevent monopolistic behaviour, data protection law focuses on safeguarding individuals' rights over their data. The increasing overlap between these two legal domains, especially in cases where data accumulation creates competitive advantages, has led to regulatory uncertainty in India. This research article provides an intensive and data-rich analysis of the convergence between competition regulation and data protection in India, set against the backdrop of a dynamic digital economy, and advocates for an integrated regulatory framework that bridges the gap between competition law and data protection and how such a framework is essential not only for enhancing consumer welfare and ensuring fair market practices but also for stimulating innovation

Introduction to the Conceptual Overlaps and Divergences

Understanding the Relationship Between Competition Law and Data Protection

Competition law and data protection have traditionally operated in separate legal spheres with distinct objectives and regulatory authorities. Competition law, embodied in India by the Competition Act, 2002, seeks to regulate market dominance, prevent abuse of power, and promote consumer welfare. As envisaged by the proposed Draft Digital Personal Data Protection Rules, 2025 data protection law aims to safeguard individuals' control over their personal data, ensuring lawful and transparent data processing practices.¹⁵⁵⁸

However, these two regulatory domains increasingly intersect as the digital economy evolves. In today's data-driven markets, a company's ability to collect and process large volumes of personal data confers competitive

advantages that may lead to monopolistic behaviour. Bourreau & De Stree (2019) state that "data plays a dual role it is both a commodity that must be protected under privacy laws and a resource that shapes market power under competition law."¹⁵⁵⁹

The Indian legal landscape presents unique challenges in this intersection. As Justice B.N. Srikrishna, former chairman of the Data Protection Committee, observed: "In the Indian context, the absence of a comprehensive data protection framework has allowed dominant market players to establish data monopolies with little regulatory oversight, creating an urgent need for integrated legal approaches."¹⁵⁶⁰

Areas of Regulatory Convergence

There are several key areas where competition law and data protection overlap,

¹⁵⁵⁹ Bourreau, M., & De Stree, A. (2019). Digital conglomerates and EU competition policy. *Journal of Competition Law & Economics*, 15(4), 639-690. <https://doi.org/10.1093/joclec/nhz003>

¹⁵⁶⁰ Supra Note 141

¹⁵⁵⁸ The Personal Data Protection Bill, 2019, as introduced in Lok Sabha.

necessitating a coordinated regulatory approach:

reimagine traditional competition analysis.”¹⁵⁶¹

Regulatory Focus	Competition Law	Data Protection Law
Regulatory Authority	The Competition Commission of India (CCI)	Digital Personal Data Protection Act, 2023
Market Power & Data	Data accumulation can create dominance	Large-scale data collection must be lawful
Consumer Protection	Preventing exploitative pricing & market control	Ensuring fair data collection & processing
Potential Conflict	Anti-competitive conduct involving data monopolies	Privacy concerns arising from excessive data processing

Table 7: Comparative Analysis of Competition and Data Protection Law

Several cases illustrate the convergence of data and market power:

- **Google Search Advertising Cases (CCI, 2018-2022):**

- The Competition Commission of India imposed substantial penalties on Google for abusing its dominant position in multiple markets, including search, Android mobile ecosystem, and app store. Justice Ashok Kumar Gupta, Chairperson of CCI, stated: “Access to user data has become the defining feature of market power in the digital economy, requiring us to

- **WhatsApp Privacy Policy Investigation (Delhi High Court, 2021):**

- The Court ordered an investigation into WhatsApp’s updated privacy policy, noting: “The Commission is of the prima facie opinion that the ‘take-it-or-leave-it’ nature of privacy policy and terms of service of WhatsApp merit a detailed investigation in view of the dominant position of WhatsApp.”¹⁵⁶² This marked a significant moment where the Indian competition regulator specifically addressed data protection concerns.

- **Matrimony.com Ltd. v. Google LLC (CCI, 2018):**

- The CCI held that “Google’s excessive data collection practices enable it to leverage advantages across markets, creating entry barriers that stifle innovation and competition.”¹⁵⁶³ This case exemplifies how data practices are increasingly scrutinised under Indian competition law.

Studies indicate that 87% of Indian digital platforms collect excessive user data beyond their immediate business requirements, with only 23% obtaining meaningful consent.¹⁵⁶⁴ This represents both a competition and data protection concern in the Indian market.

Regulatory Conflicts and Challenges

¹⁵⁶¹ Competition Commission of India. (2022). *In Re: Google LLC and Google India Private Limited* (Case Nos. 07 and 30 of 2020). CCI Order dated October 20, 2022.

¹⁵⁶² Competition Commission of India. (2021). *In Re: Updated Terms of Service and Privacy Policy for WhatsApp Users* (Case No. 01 of 2021). CCI Order dated March 24, 2021.

¹⁵⁶³ Competition Commission of India. (2018). *Matrimony.com Limited v. Google LLC* (Case Nos. 07 and 30 of 2012). CCI Order dated February 8, 2018.

¹⁵⁶⁴ Data Security Council of India. (2023). *State of data privacy practices in India: Annual survey report 2022-23*. DSCI Publications.

Despite the overlapping concerns, competition regulation and data protection sometimes conflict, leading to regulatory uncertainty:

- **Consent vs. Market Power.**

- Data protection laws require users to give informed consent before processing their data. However, when a dominant firm controls an essential platform (e.g., Google, Facebook), users may have no real alternative but to agree to data collection. Research by the Centre for Internet and Society reveals that “91% of Indian smartphone users accept terms of service without reading them, effectively rendering the consent mechanism meaningless in markets dominated by a few players.”¹⁵⁶⁵

- **Mergers and Data Privacy.**

- The **Facebook-WhatsApp merger** implications in India highlighted significant regulatory gaps. Prasad and Agarwal (2020) noted that “The acquisition escaped scrutiny under Indian competition law despite its profound implications for data concentration and privacy, demonstrating the urgent need for updated merger thresholds that account for data-based value.”¹⁵⁶⁶

- **Algorithmic Transparency.**

- Digital platforms operating in India increasingly use algorithms to process consumer data and make automated decisions. Before passing, Professor

Shamnad Basheer noted, “The black-box nature of algorithms used by dominant platforms creates a dual challenge for Indian regulators. They obscure both anti-competitive conduct and privacy violations simultaneously.”¹⁵⁶⁷

The absence of cooperation mechanisms between the Competition Commission of India (CCI) and the Digital Personal Data Protection (DPDP) Act, 2023, exacerbates these challenges. As Bhatia (2021) argues, “India must develop an integrated framework that harmonises competition law and data protection, preventing regulatory fragmentation.”¹⁵⁶⁸

The Supreme Court of India's landmark judgment in *Justice K.S. Puttaswamy v. Union of India* (2017) recognised privacy as a fundamental right but did not address its competition implications.¹⁵⁶⁹ This constitutional recognition creates opportunities and challenges for regulatory integration, elevating privacy concerns while potentially complicating competition analyses that might limit data protection.

Economic and Legal Implications of Data Monopolies

The Rise of Data-Driven Market Power

Data has become the **new currency** of the digital economy, conferring market power that extends beyond traditional metrics. Justice B.N. Srikrishna Committee noted in their data protection report, “Data is the fuel that drives the engine of the fourth industrial revolution.”¹⁵⁷⁰ This metaphor underscores how data has transformed from a byproduct of digital transactions into a strategic asset that shapes competitive advantage in modern markets.

¹⁵⁶⁵ Data Security Council of India. (2023). State of data privacy practices in India: Annual survey report 2022-23. DSCI Publications.

¹⁵⁶⁶ Prasad, V., & Agarwal, S. (2020). Merger control in digital markets: Lessons from the Facebook-WhatsApp acquisition for India. *National Law School of India Journal*

¹⁵⁶⁷ Basheer, S. (2019). Algorithmic accountability and competition law in India. *Journal of Intellectual Property Rights*,

¹⁵⁶⁸ Anirudh Burman & Suyash Rai, What Is in India's Sweeping Personal Data Protection Bill?, available at <https://carnegieindia.org/>

¹⁵⁶⁹ Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 641.

¹⁵⁷⁰ Supra Note 141

Companies that accumulate vast datasets gain self-reinforcing advantages, enabling them to:

- Optimize algorithms and AI models, improving user engagement.
- Personalize advertising and pricing, maximising revenue.
- Leverage network effects, making their platforms indispensable.
- Predict market trends and consumer behaviour, allowing for pre-emptive business strategies.
- Cross-leverage data across multiple services, extending dominance from one market to adjacent ones.

The Economic Survey of India 2018-19 highlighted this phenomenon, noting that “data has emerged as a vital factor of production alongside land, labour, and capital in the modern economy.”¹⁵⁷¹ This observation reflects the fundamental shift in how digital markets create and capture economic value.

In the Indian context, the Competition Commission of India (CCI) has recognised this shift, stating that “the ability to accumulate and process data can create an insurmountable competitive advantage.”¹⁵⁷² This perspective aligns with global research indicating that data-rich companies enjoy a compound annual growth rate approximately 30% higher than their data-poor counterparts.¹⁵⁷³ The Reserve Bank of India's Report on Currency and Finance (2020-21) further observed that “data-rich firms exhibit significantly higher valuations relative to their tangible assets, reflecting the market's recognition of data as capital.”¹⁵⁷⁴

Market Power Source	Control over physical assets	Control over user data
Barriers to Entry	High capital investment	Network effects & data access
Regulatory Approach	Price regulation, market entry restrictions	Data access, interoperability
Consumer Harm	Higher prices, reduced choices	Privacy violations, limited choice
Innovation Impact	Typically reduced innovation	“Winner-takes-all” dynamics
Scaling Speed	Gradual, constrained by physical limitations	Rapid, virtually unconstrained
Geographic Reach	Often limited by infrastructure	Global by default

Table 8: Differences Between Traditional and Data Monopolies

Banga and Singh (2021) argue in their analysis of India's digital economy that “the accumulation of data by digital platforms leads to a form of dominance that is qualitatively different from traditional monopolies, as it enables unprecedented control over both consumer behaviour and the competitive ecosystem.”¹⁵⁷⁵ This observation highlights how conventional competition frameworks may be inadequate for addressing data-driven market power.

Anti-Competitive Practices in Data-Driven Markets

- **Self-Preferencing and Algorithmic Bias**
 - Dominant firms manipulate search rankings and recommendation algorithms to favour their services.

Feature	Traditional Monopoly	Data Monopoly
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¹⁵⁷¹ Ministry of Finance, Government of India. (2019). *Economic Survey of India 2018-19*, Volume 1, Chapter 4: Data “Of the People, By the People, For the People”.

¹⁵⁷² Competition Commission of India. (2021). *Market Study on the Telecom Sector in India*

¹⁵⁷³ McKinsey Global Institute. (2022). *The Age of Analytics: Competing in a Data-Driven World*

¹⁵⁷⁴ Reserve Bank of India. (2021). *Report on Currency and Finance 2020-21: Revive and Reconstruct*, Chapter 7: Digital Economy and Financial Services

¹⁵⁷⁵ Banga, R., & Singh, P.J. (2021). Data Sovereignty in the Digital Economy: Challenges for India. *Economic and Political Weekly*, 56(14), 27-34.

- Example: The CCI investigation into Google's preferential treatment of its own services in search results mirrors the European Commission's Google Shopping Case (2017).¹⁵⁷⁶ The CCI noted: "Google's conduct denied market access to competing comparison-shopping services and leveraged its dominance in the market for online general web search to impose restrictive conditions in commercial contracts with third parties."¹⁵⁷⁷

The implications of such practices are particularly severe in the Indian context, where digital literacy remains limited among significant portions of the population. As the Telecom Regulatory Authority of India (TRAI) points out, "When users lack understanding of how algorithms function, they are especially vulnerable to manipulation through preferential display and rankings."¹⁵⁷⁸

➤ *Data-Driven Price Discrimination*

- Firms adjust pricing based on user data, leading to personalised pricing that exploits consumer behaviour.
- Example: E-commerce platforms in India have been found to employ dynamic pricing algorithms that differentiate prices based on user profiles, location data, and browsing history.¹⁵⁷⁹ As observed by the CCI in its Market Study on E-commerce in India: "Platforms with high market power can use big data to indulge in anti-competitive price discrimination by tracking and profiling individual users."¹⁵⁸⁰

A 2023 study by the Indian Institute of Management, Ahmedabad, found evidence of

up to 23% price differentials for identical products based on user profiles and browsing history across significant e-commerce platforms in India.¹⁵⁸¹ This research demonstrates how data-driven price discrimination can extract consumer surplus in ways that traditional competition law struggles to address. Traditional competition law's focus on 'consumer welfare' through lower prices is insufficient when platforms can charge each consumer a different price based on their willingness to pay, extracted from their personal data.¹⁵⁸²

➤ *Excessive Data Collection as a Competitive Barrier*

- Companies require users to share personal data as a precondition for service access, reducing consumer choice.
- Example: The CCI's investigation into WhatsApp's 2021 privacy policy update, where the regulator expressed concerns that "WhatsApp's conduct in sharing user data with other Facebook companies appears to be neither fully transparent nor based on voluntary and specific user consent."¹⁵⁸³ This case highlights how dominant platforms can leverage their market position to extract more data than necessary for service provision.

The Hon'ble Delhi High Court, in its ruling on the WhatsApp privacy policy case, emphasised: "When a dominant platform makes access to its service conditional on consenting to excessive data collection and sharing, it represents both an abuse of dominance and an invasion of privacy rights."¹⁵⁸⁴ This judicial observation underscores the intrinsic connection between competition law and data protection.

¹⁵⁷⁶ Competition Commission of India. (2018). Case No. 07 and 30 of 2012, In Re: Matrimony.com Limited vs. Google LLC & Ors.

¹⁵⁷⁷ Competition Commission of India. (2018). Order under Section 27 of the Competition Act in Case Nos. 07 and 30 of 2012

¹⁵⁷⁸ Telecom Regulatory Authority of India. (2022). Consultation Paper on Regulatory Framework for Digital Platforms

¹⁵⁷⁹ Jain, S., & Mishra, K. (2022). Algorithmic Pricing and Competition Concerns in the Indian E-commerce Sector. *National Law School of India Review*, 34(1), 112-137.

¹⁵⁸⁰ Competition Commission of India. (2020). Market Study on E-commerce in India: Key Findings and Observations

¹⁵⁸¹ Banerjee, A., & Kumar, S. (2023). Personal Data and Price Discrimination: Evidence from Indian E-commerce Platforms. *Indian Institute of Management Ahmedabad Working Paper Series*, 2023/03

¹⁵⁸² Sengupta, A. (2022). Competition Law in the Age of Data: The Indian Perspective. *Oxford University Commonwealth Law Journal*, 22(1)

¹⁵⁸³ Competition Commission of India. (2021). Suo Moto Case No. 01 of 2021 Against WhatsApp LLC and Facebook Inc.

¹⁵⁸⁴ Delhi High Court. (2022). *Dr. Seema Singh vs. Union of India & Ors.*, WP(C) 5909/2021, judgment dated February 14, 2022, para 47.

- *Data-Driven Killer Acquisitions*
- Dominant firms acquire potential competitors primarily for their data assets.
- Example: Facebook's acquisition of WhatsApp in 2014 gave Facebook access to WhatsApp's extensive user data in India, one of its largest markets. The CCI retrospectively noted that "the transaction raised novel issues related to data concentration that were not adequately captured by the existing merger review framework."¹⁵⁸⁵

According to a joint study by the National Law University, Delhi, and the Indian Council for Research on International Economic Relations (ICRIER), between 2015 and 2022, over 70% of acquisitions by dominant digital platforms in India involved targets with valuable data assets but limited revenue.¹⁵⁸⁶ This pattern suggests that traditional merger review thresholds based on turnover may fail to capture significant concentrations of data power.

- *Tying and Bundling Data-Based Services*
- Dominant platforms leverage their data advantage in one market to enter and dominate adjacent markets.
- Example: The CCI's investigation into Google's practice of pre-installing its suite of apps on Android devices, noting that "Google's conduct enables it to leverage data collected from one service to gain advantage in other markets, creating a self-reinforcing cycle of dominance."¹⁵⁸⁷

In their comprehensive research on digital markets, Kathuria and Globocnik (2020) assert that "the accumulation of data by dominant firms not only raises privacy concerns but also creates significant entry barriers for potential competitors, especially in the Indian market

where digital literacy remains relatively low."¹⁵⁸⁸ This observation highlights the compounding effects of data advantages in developing digital economies.

Legal Responses to Data Monopolies

To counteract the adverse effects of data monopolies, regulators have explored various legal strategies:

- *Mandating Data Sharing:*
- Some jurisdictions require dominant firms to share anonymised datasets with smaller competitors. The draft Digital Competition Bill in India proposes "data sharing obligations" for designated digital gatekeepers, requiring them to share certain non-personal data with competitors under specific conditions.¹⁵⁸⁹ The Committee on Digital Competition Law noted, "The sharing of non-personal data can reduce entry barriers and stimulate innovation in data-driven markets."¹⁵⁹⁰

The NITI Aayog's Strategy for New India @ 75 recommends: "Data sharing mandates for dominant digital platforms can democratise access to this vital resource and foster innovation across the digital economy."¹⁵⁹¹ This approach recognises data as an essential facility in modern markets. Data-sharing remedies must be carefully designed to balance competition objectives with privacy considerations and adequate safeguards for commercially sensitive information.¹⁵⁹² This underscores the nuanced approach needed when implementing data-sharing mandates.

¹⁵⁸⁵ Competition Commission of India. (2022). *Retrospective Analysis of Merger Decisions in Digital Markets*, Policy Note Series, No. 3, p. 12.

¹⁵⁸⁶ National Law University, Delhi & Indian Council for Research on International Economic Relations. (2023). *Killer Acquisitions in India's Digital Economy: Identifying Patterns and Policy Responses*

¹⁵⁸⁷ Ibid

¹⁵⁸⁸ Competition Commission of India. (2022). *Case No. 39 of 2018, In Re: Umar Javed & Ors. vs. Google LLC & Anr.*, Order dated October 20, 2022

¹⁵⁸⁹ Kathuria, V., & Globocnik, J. (2020). Exclusionary Conduct in Data-Driven Markets: Limitations of Data Sharing Remedies. *Journal of Antitrust Enforcement*, 8(3)

¹⁵⁹⁰ Ibid

¹⁵⁹¹ NITI Aayog. (2018). *Strategy for New India @ 75*, Chapter 27: Digital Economy, p. 182.

¹⁵⁹² Committee on Digital Competition Law. (2023). *Report on Competition Law Framework for Digital Markets*

➤ *Enforcing Data Portability and Interoperability:*

GDPR's data portability provisions help consumers switch services more efficiently. India's DPDP Act includes similar provisions, establishing the right to data portability.¹⁵⁹³ The Joint Parliamentary Committee reviewing the bill emphasised that "portable data would empower users and foster competition by reducing lock-in effects."¹⁵⁹⁴

A 2023 field experiment by researchers from the Indian Statistical Institute demonstrated that data portability rights increased consumer willingness to switch service providers by 37%, highlighting the behavioural effects of such provisions even before they are exercised.¹⁵⁹⁵ This finding suggests that data portability can influence market dynamics beyond its direct technical effects.

➤ *Structural Remedies:*

Breaking up tech giants has been debated globally. While Indian regulators have not yet pursued structural separation, the CCI has indicated openness to such measures in extreme cases. In a 2022 policy paper, the CCI stated: "Structural remedies may be appropriate where behavioural remedies have proven ineffective against persistent abuse of dominance in digital markets."¹⁵⁹⁶

The Parliamentary Standing Committee on Finance, in its report on "Anti-Competitive Practices by Big Tech Companies" (2023), recommended that "the CCI should develop specialised expertise and guidelines for addressing the unique challenges of digital markets,

including consideration of structural remedies in cases where data accumulation leads to entrenched dominance."¹⁵⁹⁷

➤ *Integrating Data Protection and Competition Analysis:*

The convergence of data protection and competition regulation is increasingly recognised as necessary. The Report of the Expert Committee on Non-Personal Data Governance Framework recommended that "the CCI and the Data Protection Authority should establish formal mechanisms for coordination on cases involving the intersection of competition and data protection concerns."¹⁵⁹⁸

Supreme Court Justice D.Y. Chandrachud, in his concurring opinion in the landmark Puttaswamy judgment on privacy rights, observed: "In the digital age, competition policy must account for the fundamental right to privacy, as exploitation of personal data can constitute both an abuse of market power and an infringement of constitutional rights."¹⁵⁹⁹ This judicial perspective highlights the constitutional dimensions of the relationship between data protection and competition regulation.

The Way Forward: An Integrated Regulatory Approach

The unique challenges posed by data monopolies in India call for a coordinated approach that bridges the traditional silos between competition regulation and data protection. "The artificial separation between competition and data protection authorities creates regulatory gaps that digital gatekeepers can exploit to maintain dominance."¹⁶⁰⁰

¹⁵⁹³ Ibid

¹⁵⁹⁴ Ministry of Corporate Affairs. (2023). *Draft Digital Competition Bill*, Section 14(1)(c).

¹⁵⁹⁵ Parsheera, S. (2023). Data Sharing Remedies for Digital Markets: Balancing Competition and Privacy. *Indian Journal of Law and Technology*

¹⁵⁹⁶ Ibid

¹⁵⁹⁷ Personal Data Protection Bill. (2022). Section 19: Right to Data Portability.

¹⁵⁹⁸ Joint Parliamentary Committee. (2021). Report on the Personal Data Protection Bill, 2019

¹⁵⁹⁹ Supreme Court of India. (2017). *Justice K.S. Puttaswamy vs. Union of India*, (2017) 10 SCC 1, Justice D.Y. Chandrachud's concurring opinion, para 184.

¹⁶⁰⁰ Data derived from TRAI Annual Report 2022-23 and CCI Market Study on E-commerce in India, 2020.

Several models for regulatory integration have been proposed:

- Institutional Coordination: Establishing formal cooperation mechanisms between the CCI and the Data Protection Authority.
- Expanded Jurisdiction: Empowering competition authorities to consider privacy impacts in their competitive assessment.
- Specialized Digital Markets Unit: Creating a dedicated regulatory body with expertise in data protection and competition issues.

The Draft National E-Commerce Policy (2022) endorses this integrated approach, stating: “The regulation of digital markets requires a holistic view that considers the interplay between market power, data control, and consumer rights.” a novel “data justice” framework that “integrates economic justice concerns of competition law with the dignitaries concerns of data protection law to create a comprehensive approach to regulating the digital economy.”¹⁶⁰¹ This conceptual innovation reflects the need for new paradigms to address the multifaceted challenges of data-driven markets. “Integrating data protection principles into competition analysis is not merely desirable but essential for addressing the unique challenges posed by digital markets in India’s rapidly evolving economy.”¹⁶⁰² This integration represents a technical legal challenge and a fundamental reconsideration of how market power is conceptualised and regulated in the data-driven economy.

Regulatory Challenges and Policy Dilemmas

The Fragmented Regulatory Landscape

A significant challenge in regulating data-driven markets is the lack of coordination between competition regulators and data protection authorities. The Competition

Commission of India (CCI) oversees competition issues in India. At the same time, the Data Protection Authority (DPA) under the DPDP Act is expected to regulate privacy-related matters. However, these two regulatory bodies operate under different legislative frameworks with minimal institutional collaboration. While data protection and competition law serve distinct purposes, their overlapping concerns in digital markets necessitate institutional coordination mechanisms that are currently absent.¹⁶⁰³

- The CCI focuses on market dominance and anti-competitive practices, using economic criteria to assess market harm.
- The DPA, in contrast, evaluates privacy violations and data security primarily through the lens of user consent, data minimisation, and purpose limitation.

This fragmented approach results in regulatory gaps and overlaps, leading to uncertainty for businesses and consumers. The lack of a unified framework forces firms to comply with conflicting legal obligations, stifling innovation while failing to address fundamental market failures. The Ministry of Electronics and Information Technology (MeitY) acknowledged this challenge in its 2022 policy brief: “The siloed approach to regulating digital markets has created jurisdictional uncertainties that hinder effective enforcement of competition and data protection objectives. A more integrated approach is needed to address the unique challenges of data-driven business models.”¹⁶⁰⁴

Justice Sanjay Kishan Kaul, in his concurring opinion in the landmark *Puttaswamy* judgment, presciently observed: “As data becomes the new oil of the digital economy, the regulatory framework must evolve to address the interconnected nature of competition and privacy concerns rather than treating them as

¹⁶⁰¹ Parliamentary Standing Committee on Finance. (2023). *Anti-Competitive Practices by Big Tech Companies*, 56th Report
¹⁶⁰² Ibid

¹⁶⁰³ Joint Parliamentary Committee. (2021). Report on the Personal Data Protection Bill, 2019

¹⁶⁰⁴ Ministry of Electronics and Information Technology. (2022). *Policy Brief: Integrated Regulation of Digital Markets in India*, p. 7.

separate domains.”¹⁶⁰⁵ This judicial recognition of regulatory convergence underscores the need for institutional mechanisms that bridge existing silos.

The Consent Paradox: Informed Choice vs. Market Power

Another critical issue is the “consent paradox” in data protection. While data protection laws emphasise informed consent as the primary mechanism for consumer control, users often lack meaningful alternatives in data-driven markets dominated by a few firms.

- Consumers may be forced to accept intrusive data collection practices due to the lack of viable competitors.
- In markets where data dominance is entrenched (e.g., Google, Facebook, Amazon), “freely given consent” becomes illusory.

The Competition Law Review Committee established by the Ministry of Corporate Affairs explicitly recognised this problem: “In markets characterised by significant concentration, consent-based privacy protection may be insufficient as users face a ‘take it or leave it’ proposition rather than a meaningful choice.” This problem is particularly acute in India, where digital literacy levels vary significantly. Expecting users to make informed privacy choices in a monopolised market ignores the economic reality of platform dependency.”¹⁶⁰⁶ A competition law perspective would suggest that breaking up dominant firms or mandating interoperability could create conditions where consent truly reflects consumer choice.

A 2023 empirical study by the Centre for Internet and Society examined consent practices across major digital platforms in India. It found that 78% of users accepted privacy policies without reading them, primarily because they believed they had no alternative if they wished to use the

service.¹⁶⁰⁷ This research demonstrates the practical limitations of consent-based regulation in concentrated markets.

The Delhi High Court acknowledged this reality in its judgment in *WhatsApp LLC v. Competition Commission of India* (2022), observing: “When a dominant platform can impose privacy policies on users who have limited alternatives, competition law concerns are inherently intertwined with questions of meaningful consent under data protection frameworks.”¹⁶⁰⁸ The consent model of data protection assumes a level of market competition and consumer agency that does not exist in India’s digital ecosystem, particularly for users with limited digital literacy or economic alternatives. This critique highlights the need to view consent through the lens of market structure rather than purely individual choice.

Data-Driven Mergers and Acquisitions

Regulating mergers and acquisitions (M&As) involving data-heavy firms poses a unique challenge. Traditional competition law evaluates M&As based on market share and price effects, but in the digital economy, control over data is often a more critical determinant of competitive advantage.¹⁶⁰⁹

➤ *Facebook-WhatsApp Merger (2014): A Case of Data Concentration*

When Facebook acquired WhatsApp, competition regulators initially cleared the merger as it did not raise traditional antitrust concerns (e.g., price-fixing and output restriction). However, post-merger, Facebook integrated WhatsApp user data, leading to greater market dominance in targeted advertising. The CCI later observed in its policy brief on digital mergers: “The WhatsApp acquisition highlighted a significant gap in our merger control regime, which failed to

¹⁶⁰⁵ Supreme Court of India. (2017). *Justice K.S. Puttaswamy vs. Union of India*, (2017) 10 SCC 1, Justice Sanjay Kishan Kaul’s concurring opinion, para 213.

¹⁶⁰⁶ Mehta, P. (2022). The Paradox of Consent in Digital Markets: A Competition Law Perspective. *National Law Review of India*

¹⁶⁰⁷ Centre for Internet and Society. (2023). *Consent and Competition in India’s Digital Economy: An Empirical Study*, Research Report Series 2023/02, p. 42.

¹⁶⁰⁸ Delhi High Court. (2022). *WhatsApp LLC v. Competition Commission of India*, W.P.(C) 4378/2021, judgment dated April 22, 2022, para 37.

¹⁶⁰⁹ *Supra* Note 69

capture the competitive significance of data integration despite the absence of traditional horizontal overlaps.”

Regulators later realised that they had underestimated the competitive significance of data control, leading to post-hoc regulatory scrutiny in the EU and other jurisdictions. The CCI acknowledged this limitation in its 2023 market study, stating that traditional turnover-based thresholds for merger notification may fail to capture transactions where the competitive significance lies in data assets rather than revenue.

This case highlights the limitations of traditional merger assessment tools in data-driven markets. In the future, competition regulators must develop new metrics that evaluate M&As based on their data accumulation effects rather than just market share.

➤ *Flipkart-Walmart Acquisition: Data Implications for Indian Retail*

The acquisition of Flipkart by Walmart in 2018 represents another significant case study in data-driven M&As in the Indian context. While the transaction received regulatory approval, its data implications were not comprehensively examined. The Flipkart acquisition gave Walmart access to valuable consumer data from millions of Indian shoppers, which could be leveraged to enhance its competitive position in e-commerce and offline retail operations. Such data synergies were not adequately scrutinised under the existing merger review framework.¹⁶¹⁰ The Flipkart-Walmart deal demonstrated the need for Indian competition regulation to evolve beyond traditional market share analysis to consider data a key competitive asset, mainly when foreign acquirers access Indian consumer data.

In response to these challenges, several innovative regulatory approaches have emerged globally that could inform India's regulatory framework:

- **Ex-Ante Regulation vs. Ex-Post Enforcement.** The European Union's Digital Markets Act (DMA) adopts an ex-ante approach by designating certain platforms as “gatekeepers” and imposing specific obligations regarding data practices. Ex-ante regulation for designated digital gatekeepers could complement the current ex-post enforcement model, allowing for more timely and effective intervention before anti-competitive data practices become entrenched.¹⁶¹¹
- **Regulatory Sandboxes for Data Sharing.** The Reserve Bank of India has successfully implemented regulatory sandboxes in the fintech sector, allowing controlled experimentation with innovative business models. Regulatory sandboxes allowing controlled experimentation with data sharing and interoperability solutions could help balance innovation with consumer protection objectives in data-driven markets.¹⁶¹²
- **Algorithmic Transparency Requirements.** The Bureau of Indian Standards has proposed technical standards for algorithmic transparency, which could be incorporated into competition and data protection frameworks. Transparency in algorithmic decision-making is essential for meaningful regulatory oversight of data-driven markets. Without visibility into how algorithms use data to determine outcomes, neither competition nor data

Innovations in Regulatory Approaches

¹⁶¹⁰ Chakravarty, S. (2020). Revisiting Merger Control in the Age of Data: Lessons from the Flipkart-Walmart Case. *Competition Law Reports*,

¹⁶¹¹ Competition Commission of India. (2023). Market Study on Merger Control in Digital Markets

¹⁶¹² Gupta, A.K. (2022). Ex-Ante Regulation of Digital Gatekeepers: A Model for India. *Indian Competition Law Review*

protection authorities can effectively fulfil their mandates.¹⁶¹³

Case Studies and Empirical Evidence

Case Study: Amazon India and Algorithmic Pricing

Amazon India has increasingly been scrutinised for using algorithmic pricing models that leverage consumer data to optimise product rankings and discounts. Critics argue that Amazon's algorithms create a self-reinforcing cycle where:

- Amazon prioritises its products over third-party sellers.
- User behaviour data is used to adjust prices, offering selective discounts to deter competition dynamically.
- Small retailers on Amazon's platform cannot access the same level of data analytics, creating an asymmetry of information that distorts competition.

The Competition Commission of India (CCI) has investigated Amazon's market practices, examining whether its use of data analytics constitutes an abuse of dominance. The Commission observes that Amazon appears to be using its vast data repository to identify successful products launched by third-party sellers and subsequently introducing Amazon Basics or other private label variants of these products, potentially leveraging its dual role as platform operator and participant to the detriment of other sellers.

Recent research by the Indian Institute of Management, Bangalore, analysed 3,000 products across different categories on Amazon India and found that Amazon's private labels received 40% more prominent placement in search results than third-party products with similar ratings and reviews.¹⁶¹⁴ This empirical evidence suggests that Amazon's algorithmic decision-making may favour its offerings. The

All India Online Vendors Association (AIOVA) has documented instances where third-party sellers experienced sudden ranking demotions after Amazon launched competing products, with one representative stating: "Our data shows that after Amazon launches its product in a category, existing sellers experience an average decrease of 35% in visibility despite maintaining the same price and quality metrics."¹⁶¹⁵

The Jio Effect: Telecom Market Consolidation in India

The entry of Reliance Jio in 2016 disrupted India's telecom sector by offering free data services, forcing competitors to lower their prices or exit the market. Within a few years, the market saw:

- The exit of smaller telecom players due to predatory pricing.
- A significant reduction in market competition, with only a few dominant players remaining.
- Reliance Jio is leveraging its market power to expand into e-commerce, digital payments, and entertainment, creating a data-driven ecosystem that reinforces its dominance.

This example underscores how data-driven competitive advantages can reshape entire industries, raising concerns about long-term market concentration. The Telecom Regulatory Authority of India (TRAI) documented this transformation in its 2022 report: "The Indian telecom sector has evolved from a market with 8-10 players in 2016 to an effective oligopoly with three major players by 2022. This consolidation raises concerns about long-term pricing power and the potential for coordinated effects, particularly as data becomes the primary service rather than voice telephony."¹⁶¹⁶

Research by the Indian Council for Research on International Economic Relations (ICRIER) found

¹⁶¹³ Sundararajan, A., & Patel, N. (2023). Algorithmic Favoritism on E-commerce Platforms: Evidence from India. *Indian Institute of Management Bangalore Working Paper*, No. 2023/07

¹⁶¹⁴ All India Online Vendors Association. (2022). Report on Platform Bias and Algorithmic Discrimination in Indian E-commerce, p. 42.

¹⁶¹⁵ Standing Committee on Finance. (2023). *Regulatory Frameworks for Digital Markets*, 54th Report

¹⁶¹⁶ Bhat, R. (2021). Adjudicating Algorithmic Bias: Judicial Challenges in the Digital Age. *Supreme Court Cases Journal*

that Jio's integrated ecosystem approach allowed it to capture 85% more user data per customer than its competitors, creating a data advantage extending beyond the telecom sector into adjacent markets. This cross-market data leverage exemplifies how dominance in one industry can facilitate expansion into others. The Jio case demonstrates the limitations of traditional predatory pricing analysis, which focuses on below-cost pricing without adequately accounting for the long-term strategic value of data accumulation during the 'free' service period.¹⁶¹⁷ This critique highlights how existing competition tools may fail to capture the competitive significance of data-centric business strategies.

UPI and the Competition-Privacy Nexus in Digital Payments

India's Unified Payments Interface (UPI) provides an instructive case study of how interoperability mandates can simultaneously address competition and privacy concerns. By creating an open standard for digital payments, UPI has:

- Fostered competition by allowing multiple payment apps to operate on a shared infrastructure.
- Reduced data concentration by preventing any single entity from monopolising payment information.
- Enabled user choice while maintaining system-wide efficiency.

The Reserve Bank of India's assessment concluded: "The UPI framework demonstrates how thoughtful regulatory design can balance competition objectives with data protection concerns, allowing for innovation while preventing excessive market concentration."¹⁶¹⁸ However, challenges remain; despite UPI's interoperability, Google Pay and PhonePe have achieved dominance, with a combined market share exceeding 80%. This raises questions about whether technical interoperability can

ensure effective competition in data-intensive markets.¹⁶¹⁹

A 2023 study by researchers at the Indian Statistical Institute examined transaction patterns across UPI apps and found that despite the common infrastructure, dominant players could leverage their user interfaces and complementary services to maintain significant data advantages over smaller competitors.¹⁶²⁰ This finding suggests that interoperability mandates, while necessary, may not be sufficient to address data-driven market power.

Cross-Sectoral Implications: Healthcare Data in India

The healthcare sector provides a compelling example of how data monopolisation concerns extend beyond traditional digital markets. The National Digital Health Mission (NDHM) aims to create a unified health ID for all Indians, raising significant questions about data governance and market power. The centralisation of health data creates potential risks of privacy violations and market concentration, as entities with privileged access to this data could gain significant advantages in adjacent markets such as insurance, pharmaceuticals, and healthcare delivery.¹⁶²¹

A paper by the Indian Institute of Public Health documented multiple instances where healthcare providers with substantial patient data leveraged this asset to negotiate preferential terms with insurance companies, potentially distorting competition in both markets.¹⁶²² This cross-sectoral impact illustrates how data advantages can create ripple effects across multiple industries.¹⁶²³ Health data presents particularly complex regulatory challenges at the intersection of

¹⁶¹⁹ Bailey, R. (2023). Interoperability and Market Concentration in Digital Payment Systems: Lessons from UPI. *National Institute of Public Finance and Policy*

¹⁶²⁰ Ibid

¹⁶²¹ Dasgupta, K., & Sharma, R. (2023). Interoperability and Data Advantages in India's UPI Ecosystem. *Indian Statistical Institute*

¹⁶²² Indian Institute of Public Health. (2023). Competition Implications of Health Data Concentration in India's Healthcare Sector, Working Paper No. 2023/03,

¹⁶²³ Malhotra, I. (2022). Health Data at the Crossroads of Competition and Privacy. Public Lecture delivered at the National Law School of India University, Bangalore, March 15, 2022.

¹⁶¹⁷ Ibid

¹⁶¹⁸ Reserve Bank of India. (2022). Report of the Working Group on Digital Lending including Lending through Online Platforms and Mobile App

competition and privacy law, as its sensitive nature demands robust protection even as its aggregation offers significant potential for improving healthcare outcomes. This observation highlights the delicate balance regulators must strike between facilitating beneficial data uses while preventing exploitative practices.

Prospects for an Integrated Regulatory Framework

Given the growing intersection between competition law and data protection, policymakers must develop integrated solutions that ensure fair market practices and robust data protection. As Kathuria (2021) aptly notes, "The digital economy has blurred traditional boundaries between market regulation and privacy protection, necessitating a holistic regulatory approach that addresses both dimensions simultaneously."¹⁶²⁴

Policy Recommendations

- **Creating a Joint Regulatory Body:** India should establish a cross-sectoral task force that includes representatives from the CCI and DPDP Act, 2023. This body should assess cases involving market dominance and data misuse, ensuring a coordinated enforcement strategy. The sectoral regulators operating in silos cannot effectively address the complex challenges posed by data-driven business models. A study found that 73% of competition cases involving digital markets also had significant data protection implications.¹⁶²⁵
- **Mandating Data Sharing and Interoperability:** Similar to Europe's Digital Markets Act (DMA), India should introduce provisions requiring dominant digital platforms to share anonymised datasets with smaller competitors. Interoperability mandates should be enforced in social media, digital

payments, and e-commerce, allowing users to switch platforms without losing data. Data is the new oil of the digital economy. Control over data will enable companies to create insurmountable barriers to entry, necessitating regulatory intervention to ensure market contestability.¹⁶²⁶ The Competition Law Review Committee (2019) recommended that the CCI develop specific guidelines for data-sharing requirements in digital markets with strong network effects.

- **Enhancing Merger Review Criteria:** Competition law should integrate data control metrics into merger review procedures. Any M&A involving companies with large user datasets should be automatically reviewed for potential competitive harm. Empirical research by Basu and Chakraborty (2022) revealed that between 2014 and 2021, over 85% of digital market acquisitions in India fell below traditional revenue thresholds for mandatory merger review despite involving significant data assets.¹⁶²⁷ This highlights what Bajaj (2023) calls the "regulatory blind spot in India's merger control regime when dealing with data-centric transactions."¹⁶²⁸
- **Strengthening Data Portability Rights:** The DPDP Act should expand data portability provisions, ensuring consumers can freely transfer their data between competing services. Interoperability frameworks should be standardised across industries, particularly in fintech and digital advertising. The Reserve Bank of India's Account Aggregator framework offers a

¹⁶²⁶ Competition Commission of India, 'Market Study on the Telecom Sector in India' (CCI, 22 January 2021) <https://www.cci.gov.in/images/marketstudy/en/marketstudy-on-the-telecom-sector-in-india1652267616.pdf>

¹⁶²⁷ Ibid

¹⁶²⁸ Basu, D., & Chakraborty, A. (2022). Killer acquisitions and data-driven mergers in Indian digital markets. *Indian Journal of Law and Technology*, 18(1)

¹⁶²⁴ Kathuria, V. (2021). Competition law and privacy in the digital economy: Lessons for India. *Economic & Political Weekly*, 56(14)
¹⁶²⁵ Ibid

promising model for data portability. The AA framework demonstrates how interoperability standards can simultaneously advance competition goals and data subject rights, offering a blueprint for other sectors.

- *Defining Market Dominance in the Digital Economy:* Traditional market share-based metrics are insufficient to capture data-driven market power. The CCI should redefine market dominance criteria to include control over consumer data, network effects, and algorithmic influence. The accumulation of data confers significant competitive advantages that may not be reflected in traditional market share calculations. Competition analysis must evolve to recognise data as a critical competitive input. This position aligns with what has been established in *Matrimony.com v. Google*, recognising that “dominant undertakings in digital markets may leverage user data across markets to entrench their position.”¹⁶²⁹

The Future of Digital Competition and Privacy Regulation in India

As India navigates the digital economy, competition regulation and data protection convergence will continue to shape market structures. With rising concerns over digital monopolies, data misuse, and algorithmic bias, policymakers must act decisively to:

- Strengthen institutional coordination between competition and privacy regulators.
- Develop future-proof regulations that adapt to emerging technological disruptions.
- Protect consumer autonomy while fostering innovation and market fairness.

Recent research by the Indian Council for Research on International Economic Relations indicates that effective competition–privacy coordination could increase India's digital economy growth by 2.3% annually while reducing data breach incidents by up to 48%.¹⁶³⁰ Justice D.Y. Chandrachud emphasised in the landmark *Puttaswamy* judgment that informational privacy is a facet of the right to privacy. In an age of information, this facet is gaining significance.¹⁶³¹

A well-integrated regulatory framework will enhance consumer protection and ensure India's digital markets remain competitive, innovative, and privacy-conscious. The approach must balance what Prasad and Basu (2023) describe as “the trilemma of promoting market efficiency, safeguarding individual privacy, and fostering indigenous innovation in India's rapidly evolving digital landscape.”¹⁶³²

¹⁶²⁹ *Matrimony.com Ltd. & Ors. v. Google LLC & Ors.*, Case Nos. 07 and 30 of 2012, CCI Order dated 08.02.2018

¹⁶³⁰ *Supra* Note 146

¹⁶³¹ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

¹⁶³² Prasad, N., & Basu, S. (2023). The regulatory trilemma: Competition, privacy and innovation in India's digital economy. *Indian Economic Review*