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CONTEMPORARY AND EMERGING ISSUES IN COMPETITION LAW AND POLICY

- Moumita Chowdhury¹

ABSTRACT

The rapid evolution of digital markets, data-driven business models, and artificial intelligence has reshaped the global competition landscape, raising complex legal and policy challenges. Contemporary competition law must address market concentration among digital gatekeepers, the competitive implications of data dominance, and the emergence of algorithmic collusion. At the same time, issues surrounding platform neutrality, gig-economy labour relations, and the rise of killer acquisitions demand more sophisticated regulatory frameworks. The intersection of privacy and competition, as well as the competitive effects of vertical integration in digital ecosystems, further complicates antitrust enforcement. Beyond digital markets, new areas of concern include labour-market monopsony, sustainability agreements, and the growing need for cross-border regulatory coordination. In India, proposed reforms such as the Digital Competition Act signal a shift toward ex ante regulation to address systemic risks posed by dominant digital enterprises. This essay analyses these emerging challenges and argues that modern competition law must remain dynamic, globally aligned, and technologically informed to ensure fair markets and long-term consumer welfare.

INTRODUCTION

Competition law has undergone a significant transformation in recent decades. What began as a framework to prevent cartels, monopolies, and anti-competitive mergers has evolved into a multifaceted legal regime engaged with digital markets, technological disruptions, global trade, and socio-economic policy concerns. The rapid advancement of digital platforms, artificial intelligence (AI), big data, and blockchain has stretched traditional antitrust tools. At the same time, global

¹ BA-LLB (H), Kingston Law College.

geopolitical tensions, the rise of protectionism, and the increasing dominance of multinational corporations have challenged the enforcement capabilities of national competition authorities.

In India, the Competition Act, 2002 has matured over the past decade through decisive enforcement by the Competition Commission of India (CCI). Yet, regulators worldwide find themselves at the crossroads of balancing innovation with market fairness, economic growth with consumer protection, and global competitiveness with domestic policy priorities.

BACKGROUND

India, too, is moving toward a similar framework. The Proposed Digital Competition Act (DCA)—based on the recommendations of the Committee on Digital Competition Law—suggests a clearer regulatory regime for “Systemically Significant Digital Enterprises”

Digital markets differ fundamentally from traditional industries. They are characterised by:

- Network effects, where the value of a platform increases with user participation;
- High switching costs, locking users into closed ecosystems;
- Data-driven economies of scale;
- Winner-takes-all outcomes, often leading to monopolistic or oligopolistic structures.

The European Union’s Digital Markets Act (DMA) designates gatekeepers and imposes ex ante obligations to prevent unfair practices such as:

- self-preferencing;
- tying and bundling;
- restrictions on interoperability;
- exploitative data practices.

Regulating digital competition presents unique challenges:

- Rapid innovation cycles make enforcement reactive and often delayed.
- Market definition becomes ambiguous due to multi-sided markets.

- Zero-price markets complicate assessments of consumer harm.
- Remedies (like data-sharing or breakups) may be difficult to implement.

In the digital economy, data has emerged as a critical factor of production. Dominant firms accumulate vast amounts of behavioural, demographic, and preference data, strengthening their competitive edge. This “data advantage” can serve as a barrier to entry, allowing incumbents to predict consumer behaviour.

The intersection of privacy and competition has become a global debate. While privacy is traditionally considered a consumer protection issue, it increasingly overlaps with competitive harm. When a firm’s privacy policy restricts data portability, interoperability, or third-party access, it may entrench dominance.

1. Data Portability and Interoperability

Data portability—allowing users to transfer their data across platforms—could reduce barriers to entry. The EU’s DMA mandates interoperability in messaging services. India’s proposed DCA also contemplates such provisions for SSDEs. However, enforcing interoperability raises security, privacy, and technical feasibility concerns.

2. The Risk of Overregulation

Regulators must balance consumer protection with innovation. Excessive restrictions on data use may stifle emerging businesses that rely on data-driven models. The challenge is designing a nuanced, context-specific approach.

3. Algorithmic Decision-Making and Market Behaviour

Artificial intelligence, machine learning algorithms, and automated pricing tools have revolutionised business operations. However, they also create unprecedented risks for competition enforcement:

Algorithmic collusion can occur without explicit human intervention.

4. Competition Concerns in Generative AI Markets

Generative AI markets are dominated by a few large players due to:

- the costs of computing infrastructure;
- access to high-quality training datasets;
- vertical integration between cloud computing.

These factors raise concerns about:

- market foreclosure,
- exclusion of smaller AI developers,
- control over foundational models.

5. Labour-Market Monopsony

Competition law traditionally focuses on product markets, but hiring practices can also be anti-competitive. Employers with monopsony power can:

- depress wages;
- impose restrictive terms;
- suppress employee mobility.

6. Remedies and Enforcement Challenges

Behavioural remedies, such as commitments or transparency requirements, are often insufficient for dynamic digital markets. Structural remedies may be more effective but face of political and practical hurdles.

7. Sustainability and Competition Law

Addressing climate change requires collaborative action among firms. Environmental Agreement such as industry-wide climate pledges—may conflict with competition law. Authorities are now exploring ways to accommodate green collaborations, provided they deliver real environmental benefits and do not harm consumer welfare.

8. The Indian Perspective

India has not yet issued formal guidelines on sustainability and competition, but the CCI acknowledges the need for flexibility. With India's commitments under the Paris Agreement and net-zero ambitions, competition policy may evolve to support green innovation.

9. Geopolitics and Competition Policy

Competition enforcement is becoming entangled with national security concerns, particularly in industries like semiconductors, AI, and telecommunications. This creates risks of protectionism and politicisation of competition policy.

10. Global regulators increasingly collaborate through networks like:

- the International Competition Network (ICN);
- OECD Competition Committee;
- bilateral cooperation agreements

RELEVANT LAWS

1. Competition Act, 2002

Main statute governing anti-competitive agreements, abuse of dominance, and merger control.

2. Establishes Competition Commission of India (CCI) and the office of the Director General (DG).

Provides penalties, leniency regime, and investigative powers.

3. Competition (Amendment) Act, 2023

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- Deal Value Threshold (DVT) for digital/high-value mergers.
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4. Competition (Amendment) Act, 2023

- The most important law for emerging issues
- Deal Value Threshold (DVT) for digital/high-value mergers.
- Lesser Penalty (Leniency) Regulations, 2024

- Commitment and Settlement Regulations, 2024
- Cost of Production / Predatory Pricing Regulations, 2025

BAIL / COMPARATIVE LAWS (ESSENTIAL FOR EMERGING ISSUES)

Modern competition law research requires comparisons with global regimes because digital markets.

1. Treaty on the Functioning of the European Union (TFEU)

Article 101 TFEU – Anti-competitive agreements.

Article 102 TFEU – Abuse of dominant position.

Articles 107–109 – State aid control.

2. EU Merger Regulation (EUMR, 2004)

Controls mergers with EU-wide impact.

Digital Services Act (DSA), 2022

3. Clayton Act, 1914

Merger control, anti-competitive acquisitions.

Section 7: “Substantial lessening of competition.”

4. Federal Trade Commission Act, 1914

Section 5: “Unfair methods of competition.”

5. Consumer Protection Act, 2019 (India)

EU Consumer Rights Directive, 2011

CONCLUSION AND SUGGESTIONS

The landscape of competition law and policy is undergoing a profound transformation driven by the digital economy, data-centric business models, cross-border mergers, and platform-based market structures. Traditional tools of competition enforcement—designed for brick-and-mortar markets—

are no longer sufficient for addressing algorithmic collusion, network effects, data monopolies, multi-sided platform markets, and gatekeeper-level dominance.

In India, the Competition (Amendment) Act, 2023 represents the most significant reform since 2002. The introduction of deal-value thresholds, settlements and commitments framework, global-turnover based penalties, and expanded definitions of “control” and “hub-and-spoke cartels” marks a decisive move towards a modernized enforcement regime suitable for digital markets.

Contemporary competition policy is shifting from reaction to prevention—recognizing that early intervention, algorithmic transparency, data portability, platform neutrality, and merger scrutiny in nascent markets are essential to preserving competitive markets. The future of competition law lies in integrating economic analysis with technological insights, enhancing institutional capacity, and adopting harmonized global standards to regulate multinational digital platforms.

1. The analysis of current laws, emerging market developments, and global best Practice, the following policy.

Improve Algorithmic Transparency.

Mandate disclosures on pricing algorithms used by digital platforms.

2. Enhance Merger Scrutiny in Digital Markets.

Maintain & refine deal-value threshold rules.

3. Introduce a special framework for evaluating killer acquisitions and acquisitions of competitors.

4. Require mandatory notification of acquisitions by dominant gatekeeper platforms even when below traditional thresholds.

Develop a Data and Competition Interface Policy

Clarify how data concentration, user lock-in, and privacy abuses impact dominance.

5. Coordinate competition policy with data protection authorities to ensure interoperability, Data portability, and prevention of data-driven market foreclosure.

6. Strengthen Enforcement Tools of the CCI

Increase staffing and training in digital economics, algorithmic markets, forensic auditing.

7. Provide CCI with powers to seek real-time data, conduct dawn raids in digital firms, And retain sector experts.

Ensure faster adjudication through specialized competition benches.

8. Encourage Compliance Programs & Corporate Governance

Promote mandatory competition compliance programs for large enterprises and digital platforms.

9. Offer penalty mitigation for firms adopting rigorous internal competition law programs.

Promote International Cooperation

10. India should align with global digital competition standards.

Participate in cross-border investigations related to big tech.

11. Consumer-Centric Competition Policy

Address misleading online practices, dark patterns, review.

12. Ensure transparent ranking algorithms in e-commerce platforms.

Promote fairness for small businesses and start-ups engaging with large

Interim diaries.

13. Future-Proofing Competition Law

Immersive digital platforms

Fintech and payment ecosystems

Rapid global mergers

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