

Data Monopoly and the Limits of Competition Law: Recalibrating IPR Regulation in India's Digital Markets

A Doctrinal and Policy Analysis of the Interface Between Competition Law, Intellectual Property Regulation and Data-Driven Market Power in India

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Abstract- In digital markets, data has become a major source of competitive advantage, challenging the traditional price-based framework of competition law. This paper examines whether India's Competition (Amendment) Act, 2023 is adequately equipped to address data-driven market power and its interaction with intellectual property rights (IPR), particularly standard-essential patents (SEPs). Drawing on CCI decisions involving Google and WhatsApp, the *Ericsson v. CCI* dispute, the DPDP Act, 2023, and the proposed Digital Competition Bill, 2024, the paper identifies gaps in India's predominantly ex-post competition framework. It highlights five underexplored questions concerning the intersection of data, competition, and IPR and proposes greater coordination among competition law, intellectual property protection, and data governance to address emerging digital-market challenges.

Keywords: Digital Markets; Data-Driven Market Power; Competition Law; Intellectual Property Rights; Ex-Ante Regulation; Data Protection; Digital Competition..

Introduction- India's digital economy has increasingly come to be shaped by a relatively small number of powerful technology enterprises, including Google, Meta, Amazon, and other major digital-platform firms. These enterprises have become deeply embedded in the everyday functioning of the Indian digital ecosystem, serving a user base of more than one billion internet users through services that facilitate communication, information retrieval, digital commerce, financial transactions, payments, mobility, and a wide range of other economic and social activities. The competitive dynamics governing these markets, however, differ substantially from those traditionally associated with conventional industries. Digital platforms do not necessarily compete by reducing monetary prices or increasing physical output; indeed, many of their most widely used services are supplied to consumers at zero monetary price. Instead, competition increasingly operates through the systematic acquisition, processing, aggregation, analysis, and commercial exploitation of vast quantities of user-generated and user-related data. This development creates a fundamental conceptual difficulty for conventional antitrust analysis. Data is generally non-rivalrous in use, can generate substantial economies of scale and scope, and may acquire considerably greater competitive value through network effects, feedback mechanisms, and repeated accumulation. Its significance for market power may therefore become visible only after a platform has already achieved a substantial degree of market entrenchment. Competitive advantages derived from data accumulation can consequently reinforce an incumbent's position before conventional indicators of anti-competitive conduct become sufficiently visible to trigger regulatory intervention.

The Competition Act, 2002 was enacted within a regulatory environment in which competition assessment was principally associated with price, output, market shares, physical assets, and conventional forms of commercial conduct. The limitations of this ex-post architecture became particularly significant in the context of rapidly evolving digital markets. The Report of the Committee on Digital Competition Law (CDCL), submitted in 2024, recognised that conventional competition enforcement may be insufficient to prevent digital markets from reaching a state of irreversible or difficult-to-reverse tipping once network effects, economies of scale, and data advantages have become deeply entrenched. The Committee consequently recommended the adoption of an ex-ante regulatory framework directed at specified digital enterprises and identified categories of conduct capable of producing competitive harm before such harm becomes fully established under conventional infringement-based proceedings. These recommendations were reflected in the proposed Digital Competition Bill, 2024 (DCB), which sought to supplement rather than merely reproduce the existing competition-law architecture. The emergence of this proposed framework marks a significant conceptual shift in Indian digital-market regulation—from intervention principally after anti-competitive conduct has been established towards the possibility of imposing preventive obligations upon designated enterprises whose structural characteristics and systemic importance may create heightened competitive risks.

The regulatory recalibration of digital markets, however, cannot be examined exclusively through the lens of competition law. Data-driven markets operate within an overlapping legal environment in which at least three distinct

regulatory regimes may simultaneously govern the same commercial conduct: competition law, intellectual property law, and data-protection law. Each regime is founded upon different legal objectives, institutional structures, and conceptions of harm. Intellectual property law, particularly patent law, seeks to encourage innovation by granting legally protected exclusivity over qualifying inventions. This becomes especially significant in relation to Standard Essential Patents (SEPs), where the exercise of patent rights intersects directly with technological standards, licensing practices, interoperability, and market access. The Patents Act, 1970 has consequently become central to the jurisdictional debate concerning the extent to which competition authorities may scrutinise licensing practices involving standardised technologies. In *Telefonaktiebolaget LM Ericsson v. Competition Commission of India*, the Delhi High Court treated the Patents Act as a special statutory framework governing patent-related disputes and held that the Competition Commission of India (CCI) could not exercise jurisdiction over certain disputes concerning royalty and licensing terms arising in the SEP context. The jurisdictional issue has subsequently moved to the Supreme Court, thereby leaving unresolved the broader question of how conflicts between competition enforcement and specialised intellectual-property regulation should be institutionally reconciled.

The second overlapping regulatory framework is provided by the Digital Personal Data Protection Act, 2023 (DPDP Act). The significance of the DPDP Act for competition policy arises from the fact that the same personal-data flows that may constitute a source of competitive advantage for dominant digital platforms are also subject to legal restrictions concerning collection, processing, use, and transfer. The DPDP framework approaches these questions primarily through the rights and interests of the data principal, including the requirement of lawful processing and the role of consent, whereas competition law is principally concerned with market structure, competitive constraints, exclusionary conduct, and the preservation of contestable markets. The resulting tension becomes particularly evident where a competition remedy requires a dominant enterprise to provide data portability, facilitate interoperability, or permit the transfer of user data to competing service providers. A measure that may be desirable from the perspective of restoring competitive opportunities could simultaneously raise questions under data-protection law concerning the lawful basis for processing or transferring personal information. Conversely, a restrictive interpretation of data-protection requirements could potentially limit the effectiveness of competition remedies intended to reduce data-related barriers to entry.

The coexistence of these legal regimes therefore creates a problem that is not merely one of regulatory overlap but also one of institutional coordination and normative compatibility. Competition law may regard data concentration as a mechanism through which market power is acquired, strengthened, or leveraged; patent law may protect exclusive rights over technologies that facilitate digital-market participation; and data-protection law may restrict the manner in which personal information can be collected, processed, or transferred. Yet these statutes do not provide a comprehensive hierarchy or an explicit interpretive mechanism for resolving situations in which compliance with one regulatory objective may complicate the achievement of another. The absence of a clear legal bridge among these regimes becomes particularly consequential as India moves towards a more interventionist framework for digital competition. Against this background, the present paper examines whether India's evolving competition-law framework is institutionally and doctrinally equipped to address market power arising from the accumulation, integration, and strategic deployment of data. It argues that Indian competition law has progressively adapted traditional concepts of abuse of dominance to accommodate data-related concerns, but has not yet developed a sufficiently independent conception of data as a source of market power. The CCI's decisions in *In Re: Google (Android)* and *In Re: WhatsApp's 2021 Privacy Policy* illustrate this development. In both contexts, data-related conduct was incorporated into established categories of abuse under Section 4 rather than analysed through a distinct framework capable of identifying when data accumulation itself produces durable competitive advantage. The resulting approach permits competition authorities to address certain forms of data-driven exclusion and leveraging, but leaves unresolved the more fundamental question of when control over data should itself be treated as an important determinant of market power.

The paper therefore proceeds from the proposition that India's transition towards ex-ante digital competition regulation should not be viewed as a substitute for doctrinal development under existing competition law. Rather, the two developments must be examined together with the intellectual-property and data-protection frameworks that increasingly govern the same digital conduct. The interaction between the CCI's jurisdiction, patent-related exclusivity, and data-protection obligations raises questions concerning not only substantive standards but also institutional competence, regulatory sequencing, remedies, and conflicts of jurisdiction. These concerns are particularly acute in relation to SEPs, data portability, interoperability, cross-use of data, algorithmic coordination, and acquisitions of data-intensive emerging enterprises.

Accordingly, this paper has three interconnected objectives. First, it examines the conceptual and doctrinal limitations of India's existing competition-law framework in dealing with data-driven market power, with particular reference to the CCI's jurisprudence concerning Google's Android ecosystem and WhatsApp-Meta's data practices. Second, it analyses the competition-IPR interface through the jurisprudence concerning SEPs, FRAND licensing, and the jurisdictional

affects the availability and use of data as a competitive resource. Third, and most importantly, the paper identifies five relatively underexplored questions situated at the intersection of data, competition law, and intellectual property rights. For each question, it maps the prevailing judicial and scholarly position, identifies the precise doctrinal or institutional gap that remains unresolved, and establishes the contemporary relevance of the issue by reference to recent judicial, legislative, and policy developments up to mid-2026.

The central argument of the paper is that India requires a coordinated recalibration rather than isolated amendments to individual statutes. An effective framework for digital competition must recognise that data can function simultaneously as an economic resource, a competitive asset, an object of regulatory protection, and a component of intellectual-property-intensive technological ecosystems. The challenge, therefore, is to develop a legal architecture capable of preserving incentives for innovation and privacy while preventing entrenched digital enterprises from converting accumulated data advantages into durable barriers to competition. Such recalibration requires clearer principles concerning data-driven market power, the circumstances in which data may warrant treatment analogous to an essential facility, the relationship between competition remedies and data-protection obligations, the jurisdictional boundary between competition and patent law, and the adequacy of merger-control mechanisms for data-rich acquisitions. The paper ultimately argues that the future effectiveness of Indian digital competition policy will depend upon whether these overlapping regimes can be interpreted and designed as complementary components of a coherent regulatory architecture rather than as isolated statutory compartments.

The Conceptual Problem: Data as a Source of Market Power

Data-Based Dominance versus Price-Based Dominance

The traditional framework of competition law has largely been constructed around the assumption that market power is most readily observable through its effects on prices, output, quality, or other conventional parameters of competition. Section 4 of the Competition Act, 2002 reflects this broader understanding by identifying several forms of conduct through which a dominant enterprise may exploit or strengthen its market position. In conventional markets, the ability of a firm to increase prices above competitive levels, restrict supply, reduce quality, or impose discriminatory conditions provides relatively visible evidence of the exercise of market power. Digital markets, however, frequently operate through a fundamentally different economic model. A service may be provided to users without any direct monetary payment, while the platform simultaneously derives substantial economic value from the collection and processing of personal information, behavioural data, search histories, location information, preferences, social connections, and patterns of user engagement.

The significance of this transformation was identified at an early stage by scholars such as Maurice Stucke and Allen Grunes, who demonstrated that the conventional price-centred conception of competition becomes increasingly inadequate when data functions as the principal economic currency of a digital transaction.

This dynamic complicates the conventional consumer-welfare framework in another important respect. Lina Khan's influential analysis of Amazon challenged the assumption that short-term consumer benefits, particularly low prices and increased product availability, necessarily provide an adequate measure of competitive conditions in platform markets. A digital enterprise may deliberately prioritise rapid expansion, user acquisition, ecosystem integration, data accumulation, and the elimination or weakening of potential competitors even when consumers appear to benefit from low or zero monetary prices in the short term. The competitive concern emerges when these strategies produce durable structural advantages that become difficult for new entrants or existing rivals to overcome. The immediate consumer benefit may therefore coexist with a longer-term deterioration in contestability, innovation incentives, or competitive choice. Indian competition law therefore faces a difficult balancing exercise. It must identify circumstances in which data accumulation creates durable barriers to competition without converting data possession per se into an indicator of illegality. The appropriate analytical approach must distinguish between data that is readily available or replicable and data that is difficult for competitors to obtain; between data that improves a product and data that produces exclusionary advantages; and between legitimate data-driven efficiencies and strategic data practices designed to foreclose rivals. The development of such distinctions is essential if Indian competition law is to move beyond a purely price-oriented understanding of market power while avoiding an overbroad presumption that data concentration is itself unlawful.

Killer Acquisitions and the Nascent-Competitor Problem

The relationship between data and market power becomes even more complex when data-rich enterprises are acquired before they have developed into significant competitors. The phenomenon commonly described as the "killer acquisition" problem concerns transactions in which an established digital enterprise acquires a relatively small or emerging firm not necessarily because the target currently represents a substantial competitive threat, but because its technology, user base, intellectual property, talent, or data may enable it to become a future rival. In digital markets, the strategic significance of such acquisitions may be considerably greater than the target's current turnover or asset value

There is, however, an important limitation to a transaction-value approach. The economic value assigned to a target is not necessarily equivalent to the competitive value of its data. A relatively low-value transaction may involve a target possessing a strategically important dataset, specialised algorithm, or user community capable of generating significant future competitive pressure. Conversely, a high transaction price may reflect expectations concerning synergies, intellectual property, talent, or future profitability rather than an attempt to eliminate a nascent competitor. Transaction value can therefore function as a useful jurisdictional indicator without necessarily providing a complete test for data-driven competitive harm. methodology for identifying when a target's data resources constitute a material competitive asset even though the transaction may not cross the existing value-based threshold.

Accordingly, the Indian debate over killer acquisitions should move beyond the question of whether the DVT was necessary and examine whether the DVT, by itself, is sufficiently sensitive to the economic characteristics of data-driven markets. The more fundamental issue is whether merger regulation can identify competitive threats before they become visible through revenue, assets, or market share. If data accumulation is capable of producing durable advantages and irreversible market tipping, merger review must be capable of recognising the strategic significance of data at the earliest stage without treating every acquisition of a data-intensive start-up as presumptively anti-competitive.

Literature Review

The existing literature on digital competition in India can broadly be organised into four interconnected but insufficiently integrated strands. The first examines the reforms introduced through the Competition (Amendment) Act, 2023; the second evaluates the proposed ex-ante framework for digital markets through the work of the Committee on Digital Competition Law (CDCL) and the Draft Digital Competition Bill, 2024; the third addresses the intersection between intellectual property rights and competition law, particularly in relation to Standard Essential Patents (SEPs) and FRAND licensing; and the fourth considers the emerging relationship between data protection and competition regulation. Although each body of literature contributes significantly to understanding India's evolving regulatory framework, these strands have largely developed independently. The principal objective of the present study is therefore to read these bodies of scholarship together and identify the unresolved questions that emerge when data simultaneously functions as a competitive resource, a component of technological innovation, and an object of legal protection.

A. Scholarship on the Competition (Amendment) Act, 2023

The first body of literature focuses on the institutional and substantive changes introduced by the Competition (Amendment) Act, 2023. Legal scholars, competition-law practitioners, policy researchers, and professional associations have examined several significant reforms, including the introduction of the Deal Value Threshold (DVT), the settlement and commitment mechanisms, the extension of liability in relation to facilitating entities, the treatment of hub-and-spoke arrangements, and the possibility of imposing penalties based upon global turnover. These changes are generally understood as an attempt to modernise Indian competition law and bring its enforcement architecture closer to the economic realities of contemporary markets.

A transaction-value-based threshold provides the Competition Commission of India (CCI) with jurisdiction over certain transactions whose strategic importance may not otherwise be reflected in the financial characteristics of the target.

Consequently, while merger control has become more responsive to transactions involving innovative and potentially data-intensive firms, there has been no equally comprehensive statutory reform defining how data should be assessed as a source of market power under Section 4.

B . The CDCL Report and the Draft Digital Competition Bill, 2024

The CDCL was established against the background of increasing concerns that conventional ex-post competition enforcement may not be sufficiently effective in markets characterised by strong network effects, economies of scale, ecosystem dependence, data accumulation, and rapid technological change.] The Committee's recommendations represent a movement towards a more preventive form of digital competition regulation.

C. SEP, FRAND and the IPR-Competition Interface

The third body of scholarship concerns the relationship between intellectual property rights and competition law, particularly in the context of Standard Essential Patents

The dispute was complicated further by parallel patent-infringement proceedings and interim injunction applications before the Delhi High Court.

The subsequent jurisprudence has generated a major jurisdictional debate. Earlier proceedings permitted competition-law scrutiny of licensing practices even while patent litigation was continuing. However, the Delhi High Court's Division Bench decision in **Ericsson v. Competition Commission of India** adopted a more restrictive approach by treating the Patents Act, 1970 as a special statutory framework in relation to conduct substantially connected with patent licensing and royalty disputes. The decision raises an important question concerning the circumstances in which a sector-specific or specialised statute should displace the jurisdiction of a general competition authority.

However, relatively limited attention has been paid to the institutional consequences of this jurisdictional division in the context of India's emerging digital competition framework. In particular, the literature has not adequately addressed whether a future digital competition statute imposing data-related obligations upon systemically important digital enterprises could encounter the same "special law" objection where the relevant digital ecosystem depends upon patented technologies or standards.

D. Data Protection, Competition and the Regulatory Interface

The fourth strand of literature has emerged from the enactment of the Digital Personal Data Protection Act, 2023. Scholars examining the relationship between privacy and competition law have increasingly recognised that data protection and competition regulation may address different dimensions of the same digital-market practice. Data protection law is principally concerned with lawful processing, individual rights, accountability, and the protection of personal information, whereas competition law focuses upon market power, exclusion, foreclosure, consumer welfare, innovation, and competitive constraints.

The literature generally supports greater coordination between competition and data-protection authorities, but most contributions remain at the level of broad policy recommendations. The more difficult question of **how conflicting statutory obligations should actually be reconciled** remains insufficiently developed. For example, if a competition authority considers data portability necessary to facilitate entry by competing platforms, the transfer of personal data may simultaneously require compliance with data-protection obligations. Similarly, a remedy designed to prevent a dominant enterprise from combining datasets may have implications for both competitive conditions and the lawful processing of personal information.

Synthesis of the Existing Literature and Identification of the Research Gap

Existing studies examine **competition law, digital regulation, SEP/FRAND, and data protection separately**, but their interaction remains insufficiently explored. The main research gap concerns how data can simultaneously act as **market power, a competitive input, a privacy-sensitive asset, and an IP-related resource**.

This paper therefore focuses on five key issues:

1. **Data as an essential facility** under Section 4.
2. **Competition law and Patents Act** conflict in SEP/FRAND disputes.
3. **Deal Value Threshold (₹2,000 crore)** and data-rich acquisitions.
4. **Competition remedies and DPDP Act** requirements on data portability.

Algorithmic collusion through shared data and algorithms.

Thus, the study develops an **integrated framework linking data, competition law, IPR, and data protection** in India's digital economy.

Conclusion

India's competition-law framework has progressed more rapidly in **merger control** than in regulating digital-market conduct. The **2023 Amendment, DVT, and proposed Digital Competition Bill** reflect the need for earlier intervention in data-driven markets. However, the **Google Android and WhatsApp-Meta cases** show that existing Sections 3 and 4 still struggle to address data-based harms effectively.

The **Ericsson jurisdictional dispute** further highlights the potential conflict between competition and patent law, while the **DPDP Rules, 2025** add another overlapping regulatory layer. The five research questions identified in this paper therefore demonstrate the need for **better coordination among competition law, IPR, and data-protection law** to develop a coherent framework for data-driven market power in India.

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