International Journal of Recent Development in Engineering and Technology
Website: www.ijrdet.com (ISSN 2347-6435(Online) Volume 14, Issue 12, December 2025)

Dual Role of E-Commerce Platforms as Marketplaces and Sellers: Abuse of Dominance under Section 4 ofthe Competition Act, 2002

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***Abstract*—The rapid expansion of e-commerce platforms in India has fundamentally transformed traditional market structures. Leading digital platforms such as Amazon and Flipkart operate in a dual capacity: first, as intermediaries providing marketplace infrastructure to third-party sellers, and second, as direct sellers competing within the same marketplace. This dual role raises significant competition law concerns, particularly under Section 4 of the Competition Act, 2002, which prohibits abuse of dominant position. The paper critically examines various anti-competitive practices that may be adopted by dominant firm and can amount to abuse of dominance. It analyses the evolving jurisprudence of the Competition Commission of India (CCI), relevant judicial precedents, and the economic characteristics of digital markets, including network effects, data advantages, and algorithmic control. The study further makes reference to Draft Digital Competition Bill, 2024 and argues that traditional competition law tools face structural limitations in addressing digital market abuses and that the dual role of platforms facilitates exclusionary conduct such as self-preferencing, discriminatory access, and market foreclosure. Through doctrinal and comparative analysis, the paper highlights the need for clearer standards, sector-specific regulation, and possible ex-ante obligations to ensure competitive neutrality in Indian e-commerce markets.**

***Keywords*—: E-commerce, Abuse of dominance, Digital Market, Dual role, Predatory Pricing, Self- preferencing, Competition Act, 2002, Draft Digital Competition Bill**

I. Introduction

The digital economy has redefined commercial interactions by facilitating online platforms that connect buyers and sellers across geographical boundaries. In India, the e-commerce sector has experienced exponential growth, driven by increased internet penetration, smartphone usage, and digital payment infrastructure. Platforms such as Amazon, Flipkart, Meesho, and Myntra have emerged as dominant intermediaries that not only host third-party sellers but also compete with them by selling their own private labels or through preferred sellers.

This dual role of e-commerce platforms both marketplace operators and market participants poses unique challenges to competition law. Unlike traditional intermediaries, digital platforms exercise significant control over access to consumers, search rankings, data flows, and pricing mechanisms. This control enables them to influence competitive outcomes in ways that may distort market competition.

Section 4 of the Competition Act, 2002 prohibits abuse of a dominant position, including practices that impose unfair conditions, limit market access, or leverage dominance in one market to enter or protect another. However, the application of this provision to digital platforms is fraught with conceptual and evidentiary difficulties. The central question addressed in this paper is whether the dual role of e-commerce platforms inherently creates incentives for abusive conduct and whether Indian competition law is adequately equipped to address such concerns.

II. Conceptualising The Dual Role Of E-Commerce Platforms

A. *Nature of E-Commerce Platforms*

E-commerce platforms function as multi-sided markets, facilitating interactions between distinct user groups buyers, sellers, advertisers, and service providers. The value of the platform increases with each additional user, giving rise to strong network effects. These effects often result in market concentration and “winner-takes-most” outcomes.

Unlike neutral marketplaces, modern platforms actively curate content, control algorithms, and monetise data generated through transactions. When such platforms also engage in selling goods or services, they cease to be neutral intermediaries and assume the role of competitors to the very sellers dependent on them.

B. *The Incentive Structure of Dual Role Platforms*

The dual role creates inherent conflicts of interest. Platforms possess granular data on consumer behaviour, pricing strategies, and demand patterns of third-party sellers. Access to such nonpublic data enables platforms to design competing products, adjust pricing strategies, and strategically position their offerings in search rankings. This informational asymmetry places independent sellers at a structural disadvantage.

III. Legal Framework: Section 4 Of The Competition Act, 2002

Dominant Position

Section 4(1) of the Competition Act prohibits abuse of dominant position. Explanation (a) to Section 4 defines "dominant position" as a position of strength enjoyed by an enterprise that enables it to operate independently of competitive forces or affect competitors or consumers in its favour.

Dominance itself is not prohibited; only its abuse attracts liability. The assessment of dominance involves factors under Section 19(4), including market share, size and resources, economic power, dependence of consumers, and entry barriers. The CLRC had deliberated that Section 19(4) of the Competition Act, which specifies an inclusive list of factors for evaluating whether an enterprise enjoys a dominant position, should be amended to include 'control over data' or 'network effects' in light of the competitive advantage presented to large digital enterprises by such considerations. However, the CLRC had concluded at the time that Section 19(4) was inclusive in nature and imparted sufficient flexibility to take such novel factors into consideration while assessing dominance.

IV. Forms Of Abuse Relevant To Digital Platforms

1. *Predatory Pricing*

Predatory pricing constitutes a recognised form of exclusionary abuse of dominance under competition law, whereby a dominant enterprise deliberately incurs short-term losses by offering goods or services at prices below competitive levels, with the strategic objective of foreclosing competitors and subsequently recouping losses through higher prices once effective competition has been eliminated.

Under Indian law, such conduct is expressly prescribed under Section 4(2) (a) (ii) of the Competition Act, 2002, which characterizes predatory pricing as the sale of goods or provision of services at a price below cost, as may be determined by regulations, with a view to reducing competition or eliminating competitors.

The Competition Commission of India (CCI), in line with international jurisprudence and OECD guidance, has consistently emphasized that low pricing per se is not anticompetitive. The distinction between aggressive competition and unlawful predation necessitates a rigorous economic assessment. In this regard, predatory pricing analysis traditionally involves two key elements: (i) pricing below an appropriate measure of cost, and (ii) the likelihood of recoupment through the exercise of market power following the exit of competitors.While the Indian statutory framework explicitly incorporates the below-cost requirement, the recoupment analysis, though not expressly mandated by statute, has informed the Commission's assessment in practice.

A conventional approach to predatory pricing focuses on below-cost pricing, often assessed with reference to average variable cost (AVC), on the assumption that pricing below such a benchmark would exclude competitors that are equally efficient as the dominant firm.This approach has found resonance in Indian jurisprudence, most notably in *MCX Stock Exchange Ltd. v. National Stock Exchange of India Ltd.*,where the CCI and the Competition Appellate Tribunal (COMPAT) examined whether the zero-pricing of currency derivatives by NSE constituted predatory conduct. The Tribunal recognised that sustained zero pricing by a dominant platform, coupled with cross-subsidisation from other market segments, could potentially amount to predatory pricing when it impedes the emergence of effective competition.

However, the assessment becomes considerably more complex in cases of above-cost predatory pricing, where prices, although aggressive, remain above conventional cost benchmarks. In such cases, competition authorities must examine whether the impugned conduct serves a legitimate business purpose such as promotional pricing, market penetration, or inventory clearance or whether its primary objective is the exclusion of competitors. Jurisdictions such as the United States place significant emphasis on the recoupment test, requiring proof that thedominant firm is likely to recover its losses through future super competitive pricing.

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While Indian law does not explicitly mandate such a test, the underlying logic of recoupment remains relevant to the assessment of exclusionary intent and competitive harm.

The application of predatory pricing doctrine in digital markets presents distinct challenges for Indian competition enforcement. Digital markets are often characterised by near-zero marginal costs, high fixed costs, rapid scalability, and strong network effects.In such environments, traditional price-cost tests may yield misleading outcomes. For instance, many digital platforms offer products or services at a price of zero, which, if assessed mechanically, would automatically fail a price-cost test. However, zero pricing may reflect legitimate business models, such as freemium strategies, wherein basic services are offered free of charge to build user base, while monetisation occurs through premium services, advertising, or data-driven revenue streams.

These complexities are further amplified in the context of multi-sided digital platforms, which form the backbone of contemporary digital markets. Such platforms frequently engage in cross-subsidisation, offering low or zero prices on one side of the market to attract users and generate network effects, thereby enhancing the platform's value on another side where revenue is extracted.The CCI has acknowledged this dynamic in cases involving digital platforms, including ride-hailing and e-commerce markets, where below-cost pricing on one side may be efficiency-enhancing rather than exclusionary.Accordingly, an assessment of predatory pricing in multi-sided markets must consider the overall pricing and cost structure of the platform, rather than focusing narrowly on a single market side.

Nevertheless, the same characteristics that make multi-sided platforms efficient can also facilitate predatory strategies. Strong network effects and economies of scale may enable dominant platforms to engage in sustained loss-making strategies aimed at denying rivals theminimum viable scale necessary to compete. In such circumstances, reliance solely on pricecost benchmarks may be inadequate. This concern has been reflected in Indian enforcement practice, particularly in cases involving digital intermediaries. In Fast Track Call Cab Pvt. Ltd. v. ANI Technologies Pvt. Ltd. (Ola)and *Meru Travel Solutions Pvt. Ltd. v. Uber India Systems Pvt. Ltd.,*allegations were raised that prolonged below-cost pricing, funded by deep-pocketed investors, was used to foreclose competition.

While the CCI ultimately dismissed these complaints at the prima facie stage, the cases underscore the structural challenges in applying traditional predatory pricing tests to digital markets.

An additional doctrinal difficulty arises from the "equally efficient competitor" standard, which assumes that harm to less efficient competitors does not warrant intervention. In digital markets, however, nascent firms may initially be less efficient precisely because they have not yet attained scale or network effects. Exclusion of such firms through sustained predatory strategies may nonetheless result in long-term consumer harm by entrenching market power and stifling innovation.

In response to these limitations, alternative analytical frameworks have been proposed. One such approach examines whether a below-cost pricing strategy is profitable because it enhances efficiencies such as through user acquisition and network expansion or whether it is profitable solely due to its capacity to weaken or eliminate competitors.Where the latter is the only plausible explanation, and no countervailing efficiencies are demonstrated, the conduct may be indicative of predatory pricing within the meaning of Section 4 of the Competition Act. While Indian enforcement practice in this area is still evolving, such approaches may provide a more nuanced framework for addressing exclusionary pricing strategies in digital markets.

In conclusion, predatory pricing in digital markets poses significant doctrinal and evidentiary challenges for Indian competition law. While Section 4 of the Competition Act provides a statutory foundation for intervention, its effective application requires a contextual and economically informed analysis that accounts for platform economics, network effects, and long-term competitive harm. As Indian digital markets continue to mature, the evolution of predatory pricing jurisprudence will play a critical role in balancing the objectives of protecting competition, encouraging innovation, and safeguarding consumer welfare.

2. Margin Squeeze as an Abuse of Dominance

Margin squeeze refers to an exclusionary pricing strategy adopted by a vertically integrated dominant enterprise operating simultaneously in upstream and downstream markets, whereby it sets the price of an essential upstream input at a level that leaves an insufficient margin for downstream competitors to operate profitably, even if downstream prices are not predatory in themselves.

Unlike classical predatory pricing, margin squeeze is recognised as an above-cost exclusionary abuse, as the anticompetitive harm arises from the compression of margins rather than pricing below cost.

Under Indian competition law, margin squeeze is not explicitly enumerated as a separate head of abuse under Section 4 of the Competition Act, 2002. Nevertheless, it may be subsumed within Section 4(2)(a)(ii) (imposition of unfair prices) or Section 4(2)(c) (denial of market access), particularly where access to the upstream firm's resources is indispensable for effective downstream competition. Comparative jurisprudence, especially under Article 102 TFEU, has consistently treated margin squeeze as an independent form of abuse not requiring proof of refusal to deal or predatory pricing.

In the Indian context, the Competition Commission of India has engaged with margin squeeze arguments in sectoral cases involving network industries, although a clear doctrinal framework is yet to emerge. The principal analytical challenge lies in identifying an appropriate cost benchmark and assessing competitive foreclosure effects, especially in digital and platform markets characterised by high fixed costs and network effects.As digital ecosystems increasingly involve vertically integrated platforms controlling critical inputs such as data, infrastructure, or interoperability, margin squeeze is likely to assume greater significance within Indian abuse of dominance jurisprudence.

3. Refusal to Deal

Section 3(4) of the Competition Act, 2002 prohibits vertical agreements in the nature of supply or distribution arrangements that involve a refusal to deal with a person or a class of persons, where such agreements cause or are likely to cause an appreciable adverse effect on competition (AAEC) within India. The provision reflects the legislature's intent to subject vertical restraints to a rule-of-reason analysis, recognising that while such arrangements may in certain circumstances yield efficiency gains, they may also operate to foreclose markets and restrict competition.

Notably, the Competition Act does not expressly enumerate "refusal to deal" as an independent category of abuse of dominant position under Section 4.Nevertheless, academic commentary and comparative competition law literature suggest that exclusionary refusals, particularly when adopted by dominant enterprises, may fall within the broader prohibitions contained in Section 4(2), especially clauses relating to denial of market access and exclusionary conduct.

This interpretive possibility has been acknowledged in Indian jurisprudence, albeit without definitive doctrinal consolidation.

In *Competition Commission of India v. Schott Glass India Private Limited*, the respondents contended that an "absolute refusal to supply" by a dominant enterprise would amount to an abuse of dominance under Section 4(2)(c) of the Act, which priscribes practices resulting in the denial of market access. While the Supreme Court did not conclusively adjudicate upon the precise contours of refusal to deal as a standalone abuse, it unequivocally underscored the necessity of an effects-based analysis to establish a contravention of Section 4. By mandating an inquiry into the actual or likely competitive effects of the impugned conduct, the Court aligned Indian competition jurisprudence with modern economic principles that prioritise competitive harm over formalistic categorisation.

This shift towards an effects-based framework is a welcome development, as it enhances analytical rigour and reduces the risk of over-enforcement against legitimate commercial conduct.However, the absence of clear doctrinal guidance on how refusal to deal claims are to be assessed under Section 4 presents significant enforcement challenges, particularly in the context of digital markets. Digital ecosystems are often characterised by platform intermediation, data-driven advantages, and network effects, where refusals to grant accesswhether to platforms, data, or interoperability may have far-reaching exclusionary consequences.In the absence of explicit statutory recognition or settled judicial standardsthe application of refusal-to-deal principles to digital markets remains uncertain, raising concerns regarding legal predictability and effective enforcement under the Competition Act.

India's proposed Digital Competition Bill (DCB), as set out in the accompanying Report, introduces an ex ante regulatory framework through Section 13, which imposes a positive obligation upon large digital enterprises designated as Systematically Significant Digital Enterprises (SSDEs) to ensure that access to their platforms is not unfairly restricted for consumers and third-party service providers.The DCB adopts a principles-based regulatory architecture, as reflected in paragraph 3.37 of the Report, empowering the Competition. Commission of India (CCI) to prescribe tailored regulatory obligations and conduct requirements for individual SSDEs. Such requirements may be calibrated having regard to factors including the structure of the relevant market, scale of operations, user base, and the nature of the digital services offered.

Not with standing the ex-ante character of the DCB, the Supreme Court's decision in *Competition Commission of India v. Schott Glass India Private Limited* underscores that enforcement under Section 4 of the Competition Act, 2002 necessitates two distinct and cumulative findings: first, that the impugned conduct falls within one of the illustrative categories enumerated under Section 4(2)(a)–(e); and second, that such conduct has resulted in, or is likely to result in, an appreciable adverse effect on competition.

This doctrinal requirement gives rise to a degree of regulatory uncertainty, particularly in light of the fact that the DCB expressly authorises the CCI to adopt preventive and remedial measures against SSDEs under both the Competition Act and the DCB, as noted in paragraph 3.50 of the Report. The possibility of parallel enforcement and penalty imposition under two distinct legislative frameworks raises concerns of cumulative or disproportionate sanctions, with potentially significant implications for the economic interests of SSDEs.

Further complexity arises from the statutory design of Section 19(3) of the Competition Act, which enumerates a non-exhaustive set of factors to be considered by the CCI in determining whether conduct has caused or is likely to cause AAEC.These factors also provide the basis for rebuttal under clauses (d), (e), and (f), by demonstrating, inter alia, that the impugned conduct has contributed to technical or economic development.[50] However, Section 19(3) is textually confined to the assessment of AAEC in relation to agreements examined under **S**ection 3 of the Act. In the absence of an express statutory mandate extending these factorsto abuses examined under Section 4, the practical feasibility of conducting a robust effectsbased analysis particularly in cases of refusal to deal remains doubtful. Significantly, even the Supreme Court in *Schott Glass* did not articulate a concrete methodological framework for operationalising an effects-based inquiry under Section 4.

Additionally, the DCB does not appear to incorporate explicit exemption or justification mechanisms for SSDEs akin to those available to "gatekeepers" under the European Union's Digital Markets Act (DMA).The absence of such carve-outs or defences further obscures the scope of permissible conduct and limits the ability of SSDEs to invoke efficiency-based or objective justifications, thereby compounding uncertainty in enforcement outcomes under India's evolving digital competition regime.

4. Tying and Bundling agreements

Digital markets are frequently characterised by a high degree of modularity and interdependence among products, whether in the form of hardware, software, or web-based services. Such linkages may arise on the demand side, where one product complements another by enhancing its functionality, or on the supply side, where multiple products rely on common inputs such as patented technologies, software interfaces, or access to a shared user base. Where the existing or potential consumer base for different digital products overlaps, firms particularly those enjoying market power in at least one relevant market may have incentives to engage in tying or bundling practices.While such practices may in certain circumstances generate efficiencies, they can also result in competitive foreclosure and consumer harm when imposed by dominant enterprises.

These concerns were recently examined by the Competition Commission of India (CCI) in *Kshitiz Arya &Anr. v. Google LLC & Ors.*, where the CCI formed a prima facie view that Google had contravened multiple provisions of Section 4 of the Competition Act, 2002. On the basis of its preliminary assessment, the CCI directed the Director General to investigate the alleged practices under Section 26(1) of the Act, including allegations of refusal to deal and exclusive dealing under Section 3(4) read with Section 3(1).The investigation revealed that Google's mandatory pre-installation of the Play Store, conditional upon the execution of the Android Compatibility Commitment (ACC), substantially restricted Original Equipment Manufacturers' (OEMs) ability to develop, market, or distribute devices running alternative Android versions or forks.Further, Google prohibited OEMs from pre-installing incompatible Android platforms on branded devices and subjected all devices including those based on the Android Open Source Project (AOSP) to prior approval requirements. The ACC and Anti-Fragmentation Agreements (AFA) additionally constrained OEMs from developing or distributing non-Google-TV-Services Android forks and imposed obligations extraneous to the original licensing arrangements.[61] Collectively, these practices were found to restrict innovation, impede technical development, and deny market access, thereby attracting the prohibitions contained in Sections 4(2)(b)(ii), 4(2)(c), and 4(2)(d) of the Act.

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Website: www.ijrdet.com (ISSN 2347-6435(Online) Volume 14, Issue 12, December 2025)

Theories of harm with respect to tying and bundling

- While tying and bundling are not per se anticompetitive, when adopted by a dominant enterprise, such conduct may amount to the imposition of unfair or discriminatory conditions under Section 4(2)(a)(i), particularly where consumers are compelled to accept unwanted products as a condition for access to the primary product.
- In digital markets characterised by strong network effects, tying may operate to foreclose competition by denying rivals access to users and scale, thereby constituting a denial of market access under Section 4(2)(c). Such conduct is abusive where its profitability is driven primarily by competitor exclusion rather than efficiency gains.
- Where tying eliminates standalone demand for the tied product and deters entry by forcing competitors to enter multiple markets simultaneously, it may restrict technical or scientific development and attract the prohibition under Section 4(2)(b)(ii). This concern is particularly acute in markets with high data, capital, or technological entry barriers.
- Tying and bundling may further enable a dominant firm to leverage its market power in one relevant market to protect or enter another market, amounting to an abuse under Section 4(2)(e). Such platform envelopment strategies are effective where there is significant user overlap and economies of scope.
- In multi-sided digital platforms, bundling may sometimes be efficiency-enhancing due to cross-subsidisation; however, where such practices distort competitive conditions on one side of the platform, they may still amount to unfair pricing or conditions under Section 4(2)(a). The assessment must therefore be context-specific and effects-based.

Empirical evidence from digital market cases indicates that tying can raise prices, reduce innovation incentives, and limit consumer choice, thereby harming consumer welfare and competition. Such outcomes collectively fall within the mischief sought to be addressed by Sections 4(2)(a), 4(2)(b)(ii), and 4(2)(c) of the Act.

5. Forced Free Riding

The theory of forced free riding highlights the distinctive position occupied by digital platforms, particularly transaction-based and content platforms that act as intermediaries between sellers or content creators and end consumers.

Forced free riding occurs when adominant platform appropriates or exploits innovations developed by firms that rely on the platform for consumer access, thereby benefiting from their downstream rivals' investments without proportionate compensation.Owing to their intermediary role and privileged access to commercially valuable data relating to both consumers and dependent firms, dominant platforms may engage in conduct that enables them to foreclose competition in related or adjacent markets.

Rather than directly denying access to the platform, forced free riding represents an alternative foreclosure strategy whereby the platform captures the value generated by downstream innovation. Such conduct allows the platform to internalise the benefits of rivals' efforts while simultaneously weakening their competitive position.A commonly cited manifestation of this strategy is "content scraping," wherein a platform reproduces or displays content generated by dependent firms within its own interface.

A prominent illustration of this practice emerged in 2013, when the United States Federal Trade Commission examined allegations that Google engaged in content scraping by displaying material sourced from specialised downstream services, such as restaurant review platforms, in prominent search result features. This conduct allegedly diverted user traffic away from the original content providers and was accompanied by threats of delisting for firms that objected. Although Google ultimately agreed to discontinue the practice and the FTC chose not to pursue formal proceedings, the episode underscores the potential anticompetitive risks associated with forced free riding. The absence of a definitive adjudicatory finding has meant that the precise contours of abuse of dominance analysis in relation to such conduct remain underdeveloped in formal competition law jurisprudence.

6. Self-Preferencing

Self-preferencing refers to the practice whereby a dominant digital platform favours its own products or services over those of third-party sellers operating on the platform. In e-commercemarkets, such conduct assumes particular significance due to network effects, data advantages, and the gatekeeping role played by platforms. Under Indian competition law, self-preferencing may constitute abuse of dominant position under Section 4 of the Competition Act, 2002, particularly where it results in denial of market access or leverages dominance from one relevant market to another.

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The Competition Commission of India (CCI) has examined allegations of self-preferencing in multiple cases involving online platforms. In *All India Online Vendors Association v. Flipkart India Pvt. Ltd.*, the CCI recognised that preferential treatment to private labels and select sellers could potentially distort competition, warranting detailed investigation. Similarly, in *Delhi Vyapar Mahasangh v. Amazon Seller Services Pvt. Ltd.*, the CCI prima facie found that alleged preferential listing, exclusive arrangements, and deep discounting practices by Amazon could amount to abuse under Section 4(2)(a) and 4(2)(c). The Commission emphasised that such conduct may foreclose competition by disadvantaging similarly placed third-party sellers.

These decisions reflect the CCI's evolving approach towards addressing self-preferencing in digital markets, focusing on the effects of conduct rather than its form, and underscore the need for ex-post competition law enforcement in platform-based ecosystems.

Section 11 of the Draft Digital Competition Bill, 2024 draft bill prohibited an SSDE from engaging in self-preferencing, whether directly or indirectly. Notwithstanding the inclusion of self-preferencing within the Draft Digital Competition Bill, the articulation of the concept remains insufficiently developed. The Draft Bill does not specify the modalities through which self-preferencing may manifest within complex digital ecosystems. In contrast, the European Union's Digital Markets Act (DMA) adopts a more granular formulation, expressly prohibiting gatekeepers from affording preferential treatment to their own products or services in relation to ranking, indexing, or crawling, as compared to functionally equivalent third-party offerings.

Significantly, the Draft Bill does not explicitly address practices such as crawling and indexing, which constitute critical stages in the discoverability and organisation of online content. Under the DMA, gatekeepers are clearly restrained from manipulating these pre-ranking processes, recognising that competitive harm may arise even before ostensibly neutral algorithms are applied. The absence of similar clarification in the Indian framework leaves unresolved whether such early-stage platform conduct falls within the scope of prohibited self preferencing.

This lack of specificity introduces a degree of regulatory uncertainty. Without clearly identifying the practices that may amount to self-preferencing, enforcement risks becoming inconsistent and unpredictable, while simultaneously vesting wide discretion in the regulatory authority.

From the perspective of regulated entities, it may be difficult to ascertain whether platform conduct such as integrating or recommending proprietary services to improve user experience would attract regulatory scrutiny. At the same time, a broadly framed prohibition may afford regulators the flexibility required to address evolving and technologically sophisticated forms of self-preferencing.

Further, the Draft Bill does not draw a clear distinction between legitimate self-promotion and anticompetitive self-preferencing. While the former may be efficiency-enhancing and beneficial to consumers, the latter can distort competitive conditions by disadvantaging dependent business users and foreclosing market access. The failure to demarcate these categories risks both over-enforcement, which may chill innovation, and under-enforcement, which may allow gatekeeper power to become entrenched. A more precise articulation, informed by the DMA's approach, would therefore assist in balancing regulatory effectiveness with legal certainty.

7. *Privacy Policy Tying*

Privacy policy tying occurs when a dominant digital platform makes access to its core service conditional upon the acceptance of extensive data-collection and data-sharing terms, thereby compelling users to permit the exploitation of their personal data across multiple markets. Such conduct enables the platform to leverage data accumulated in the market where it enjoysdominance to enter a separate market with an overlapping user base, even where the products or services are not functionally linked.

Armed with data-driven advantages, the dominant firm may adopt aggressive competitive strategies in the adjacent market, including offering services at a zero or nominal price, effectively cross-subsidised by its entrenched position in the original market. Over time, the data gathered in the newly entered market may be reintegrated to reinforce dominance in the primary market, creating a self-reinforcing feedback loop of market power. This strategy can be particularly exclusionary where potential competitors, who might otherwise have developed competitive capacity in the secondary market, are foreclosed from doing so.

Under the Competition Act, 2002, privacy policy tying may constitute abuse of dominant position under Section 4, notably as the imposition of unfair conditions under Section 4(2)(a), denial of market access under Section 4(2)(c), and leveraging dominance from one relevant market to another under Section 4(2)(e).

The Competition Commission of India has recognised the competitive significance of data and privacy-related concerns in digital markets, particularly where data aggregation strengthens entry barriers and entrenches dominance.

V. CONCLUSION

The dual role of e-commerce platforms as both marketplace intermediaries and competing sellers presents a fundamental challenge to the traditional architecture of Indian competition law. The structural characteristics of digital markets network effects, data asymmetries, algorithmic control, and economies of scale create strong incentives for dominant platforms to engage in exclusionary conduct that may not be adequately captured by conventional abuse of dominance analysis under Section 4 of the Competition Act, 2002.

The Draft Digital Competition Bill, 2024 represents an important step towards addressing these challenges by introducing ex-ante obligations for systemically significant digital enterprises. However, as the analysis of self-preferencing and refusal to deal reveals, the Draft Bill itselfsuffers from conceptual indeterminacy, limited guidance on permissible conduct, and potential overlaps with the Competition Act. Unless these issues are addressed, the emerging regulatory framework risks generating uncertainty, inconsistent enforcement, and either over or underregulation of dominant digital platforms.

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