



Challenges in Policing Digital Giants

For Prelims: [Competition Commission of India](#), [National Company Law Appellate Tribunal](#), Data Protection Board, [Article 19\(2\)](#)

For Mains: Competition Law in India, Regulatory Challenges in Digital Markets, Impact of Emerging Technologies on Competition Policy

[Source: TH](#)

Why in News?

The [Competition Commission of India \(CCI\)](#) imposed a **fine of Rs 213 crore on Meta** and enforced a **five year ban on sharing** user data collected on WhatsApp with other Meta companies such as Facebook and Instagram, for advertising purposes.

- However, the [National Company Law Appellate Tribunal \(NCLAT\)](#) granted a stay on this ban and penalty.
- This case underscores the challenges of regulating Big-Techs and the need for a forward-looking competition law framework in India.

Overview of Meta's Case

- The CCI found [WhatsApp's 2021 privacy policy](#) forced user consent for data sharing with Meta, **boosting its dominance in OTT messaging and digital ads**. Meta used WhatsApp's vast user base for targeted advertising, which CCI termed an unfair trade practice, **harming privacy and blocking competition** and imposed a fine and 5 year ban on data sharing.
- **NCLAT stayed the ban and penalty on Meta**, citing the need for legal review and required deeper scrutiny of CCI's findings. As a conditional relief, **NCLAT directed Meta to deposit 50% of the fine** while legal proceedings continued.

What are the Challenges in Regulation of Big-Techs?

- **Regulatory Lag in Digital Markets:** India's [Competition Act, 2002](#) lacks explicit provisions to deal with data-centric dominance (data monopolization).
 - The law was framed for **traditional markets focusing on price and output**, whereas digital monopolies thrive on network effects, ecosystem integration, and data aggregation.
- **Fragmented Governance:** Regulatory agencies such as the CCI and Ministry of Electronics and Information Technology (MeitY) operate without adequate inter-agency coordination.
 - Additionally, the **Data Protection Board**, proposed under the [Digital Personal Data Protection \(DPDP\) Act of 2023](#), is not yet established.

- **Legal Ambiguity:** Digital platforms exploit vague laws to evade scrutiny. India's [Information Technology Act, 2000](#), lacks clarity on [Artificial Intelligence \(AI\)](#)-generated content, algorithmic bias, and data flows, raising concerns about regulatory ambiguity and ineffective implementation.
 - A key example is **X Corp's** (formerly known as Twitter) **challenge to the Indian government's use of Section 79(3)(b)** of the **IT Act** to block online content.
 - The **Supreme Court** in **Shreya Singhal v Union of India (2015)** ruled that content can only be blocked through **Section 69A of the IT Act** if deemed "necessary" under [Article 19\(2\)](#), also stated that **Section 79(3)(b) provides "safe harbour"** protection to intermediaries like X, shielding them from liability for user content but requiring removal if ordered by a court or government.
 - However, MeitY's **"Sahyog" portal (2024)** allows officials to block content under Section 79 without **court or central approval, which X Corp claims violates the law.**
- **Global Nature of Tech Firms:** These companies operate across borders, while **national laws remain territorial**, limiting enforcement and compliance.
 - For instance, Meta faces data scrutiny in the **US, EU, and Australia**, revealing a **transnational challenge**.
- **AI and Emerging Technologies:** There is no clear accountability for AI-generated content, as seen in controversial responses by the **Grok 3 chatbot** (generative AI chatbot developed by **xAI**), algorithmic decisions, or deepfake distribution.
 - Current laws do not address **autonomous content moderation or automated data profiling**.
- **Platform Power and Gatekeeping:** Tech giants like Google control app stores, ads, and communication platforms, giving their products an unfair advantage and limiting competition.

How are Major Economies Regulating Big Tech Firms?

- **US:** The US emphasized the need **for antitrust reform to curb Big Tech's dominance**.
 - Meta faces lawsuits over its acquisitions of Instagram and WhatsApp, while **Google was found guilty of violating the Sherman Act (2024)** due to monopolistic practices in search and advertising.
- **European Union:** Digital Markets Act (DMA) imposes strict rules on **"gatekeepers"** like Google and Apple to prevent anti-competitive behavior.
 - **General Data Protection Regulation (GDPR)** enforces stringent data privacy rules with heavy fines for non-compliance.

What Reforms are Necessary to Regulate Big-Techs?

- **Digital Competition Act:** The **Committee on Digital Competition Law (CDCL), 2023** proposes a **Digital Competition Act** to regulate Big Tech and strengthen CCI, addressing data dominance, network effects, and platform lock-ins.
- **Fast-Track Dispute Resolution:** Set up a **Digital Market and Data Unit (DMDU)** within the CCI to handle cases with **defined timelines**.
- **Promote Fair Competition:** Set up a **central data-sharing repository** backed by consent protocols, **accessible to all tech firms**.
 - This will ensure **fair access to anonymised data**, helping smaller players compete effectively.
- **Multidisciplinary Enforcement:** Develop unified frameworks, akin to **EU's Digital Markets Act (DMA)**, integrating privacy and competition concerns.
- **Ex-Ante Regulations:** The **Standing Committee on Finance (2022-23)** recommends a shift from **ex post** (after monopolization occurs) to **ex ante** (before monopolization happens) evaluation of competitive behavior to prevent market dominance.
 - The **CDCL, 2023** recommends ex-ante regulation of **Systemically Significant Digital Enterprises (SSDEs)** offering core digital services like search engines, social networks, and web browsers, which are prone to market concentration.
 - Classify **SSDEs** as outlined in **Digital Competition Bill, 2024** to identify and regulate Big Tech firms with significant market influence.

- **Transparency in Algorithms:** Mandate disclosure of algorithmic decision-making, AI biases, and platform policies.
 - Enforce **data silos**, **prohibit cross-platform data sharing** without explicit user consent, and impose **interoperability mandates** to level the digital playing field.
- **Transnational Framework:** Given the transnational presence of tech firms, India must develop a robust data protection framework like the **California Consumer Privacy Act (CCPA)**.
 - The CCPA applies to businesses collecting data from Californians, including foreign firms (have customers in California), and grants users rights to access, control, and delete personal data, restrict its sale, and seek transparency in data processing. Parental consent is required for selling children's data.
- **Consumer Data Protection:** Ensure strict data privacy under DPDP Act of 2023 to prevent abuse of user information by dominant firms.

Drishti Mains Question:

Discuss the role of network effects and data monopolization in the rise of digital market dominance. How should regulators respond?

UPSC Civil Services Examination, Previous Year Question (PYQ)

Prelims

Q. With reference to 'consumers' rights/privileges under the provisions of law in India, which of the following statements is/are correct? (2012)

1. Consumers are empowered to take samples for food testing.
2. When a consumer files a complaint in any consumer forum, no fee is required to be paid.
3. In case of death of consumer, his/her legal heir can file a complaint in the consumer forum on his/her behalf.

Select the correct answer using the codes given below:

- (a) 1 only
- (b) 2 and 3 only
- (c) 1 and 3 only
- (d) 1, 2 and 3

Ans: (c)