ADDRESSING COMPETITIVE RISKS AND EXAMINING THE REGULATORY GAPS IN AI TECH COMPANIES

ABSTRACT

The AI markets with its constantly evolving characteristic has garnered the attention of law enforcement authorities globally and competition market regulators are no exception to it. Companies developing AI technology have witnessed immense growth in the past decade and are poised for continued growth in the future. In such a landscape, it is important to examine the competition threats presented by such firms before it becomes insurmountable.

In this paper, the authors will analyse the subtleties in ascertaining the relevant market definition in AI landscape and examine the competitive risks in the market. It focuses on conducts of AI tech developing firms like unfair licensing agreements, anti-competitive mergers in the guise of Aqui-hire agreements. Furthermore, the essay specifically underscores the issue of API restrictions, a critical yet often overlooked aspect of the discourse. Moreover, it critically observes the inadequacies of international competition frameworks. Lastly, the essay focuses on how India can fill these limitations in its regulatory framework and achieve a healthy AI ecosystem.

I. INTRODUCTION

"Oh, it is excellent to have a giant's strength; but it is tyrannous to use it like a giant"

\- Shakespeare

Artificial intelligence has caused a seismic shift in how technology is perceived by humans. Tech firms engaging in the development of AI technologies have seen exponential growth over the recent years and are expected to grow immensely in the coming years.[283] The relentless growth of AI has caused reverberations in the enactment of laws, and competition law is no exception.[284] Bearing in mind the dynamic nature of AI market competition, regulators, policymakers and analysts worldwide are grappling with the challenge of applying traditional competition law concepts to the emergent domain of AI markets. The epochal technological shift possesses the power to disrupt existing markets, extricate dominant players and pave the way for future players. Echoing Joseph Schumpeter's notion of "gales of creative disruption",[285] such shifts compel

[283] Statista, 'Artificial Intelligence – Worldwide'(*Statista*, September 2024) < https://www.statista.com/outlook/tmo/artificial-intelligence/worldwide> accessed 10 March 2025

[284] Nicolas Petit, 'Antitrust and Artificial Intelligence: A Research Agenda' (2017) JCLP 6 361

[285] Richard Alm and Michael Cox, 'Creative Destruction' (*Econlib*)<https://www.econlib.org/library/Enc/CreativeDestruction.html> accessed 10 March 2025.

market leaders to stand vigilant while granting entrants a chance to grow – albeit momentarily before the cycle unavoidably repeats itself.

Although slow, the strategy of active vigilance expresses a pragmatic effort to safeguard AI's disruptive potential while fostering competitive dynamism in the markets.[286] It also signals a conscious departure from the passive wait-and-see method, the market regulators previously adopted during past waves of technological upheaval.[287] Considering this, it is important to recalibrate our outlook for actions undertaken by Big Tech firms. An important aspect of this narrative is that it is imperative to first discern the relevant market that AI firms fall into. In precise terms, there exists no such thing as an "AI market" because the AI market is heterogeneous in nature and cannot be constituted as a relevant market in itself.

II. ASCERTAINING RELEVANT MARKET IN AI LANDSCAPE

Defining the relevant market is the starting point of nearly all antitrust law cases. Bearing in mind the heterogeneity of AI technologies, understanding the "AI Stack"[288] can help us begin with understanding how we can define product markets around such heterogeneous technology. The AI stack can be categorized into the following layers: firstly, the hardware that provides virtualization. Next up is the data layer. The core of any AI technology is based on the data it is trained on. The data providers market is enormously wide and can be considered as a market of its own. Once the data is collected, the AI models are trained on it. Training of the models[289] from the data is a fast-growing market in itself,[290] including various hardware and software components, along with companies which specialize to varying degrees in different aspects of the process.

Considering these varied factors, we can conclude that the diversity in the products provided in the AI market constitutes different markets in themselves. Hence, what is required at this juncture is not a rigid, convincing definition of what constitutes a relevant market for antitrust scrutiny, but instead a well-calibrated framework of probing questions – ones that illuminate the conditions under which such a market takes shape and acquires economic significance.[291]Product

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[286] 'AI Boom to Fuel Anticompetitive Behavior in Big Tech, Warns German Antitrust Chief' (*Competition Policy International*, June 26, 2024)<https://www.pymnts.com/cpi-posts/ai-boom-to-fuel-anticompetitive-behavior-in-big-tech-warns-german-antitrust-chief/ > accessed 11 March 2025

[287] Lina Khan, 'We must regulate AI: Here's How' (*New York Times*, 3 May 2023) <https://www.nytimes.com/2023/05/03/opinion/ai-lina-khan-ftc-technology.html> accessed 11 March 2025

[288] Benedict Evans, 'The Problems of AI Ethics' (*Ben Evans*, 23 March 2024) <https://www.ben-evans.com/benedictevans/2024/3/23/the-problem-of-ai-ethics-and-laws-about-ai> accessed 11 March 2025

[289] Anil Anathswamy, *Why Machines Learn: The Elegant Math Behind Modern AI* (EP Dutton 2024) 13

[290] 'AI Infrastructure Market Size & Share Analysis: Growth Trends & Forecasts' (*Mordon Intelligence*) < https://www.mordorintelligence.com/industry-reports/ai-infrastructure-market > accessed 15 March 2025

[291] Lazar Radic and Kristian Stout, 'What is the Relevant Product Market in AI' [2024] Intl. Cntr for Law & Econ 107

substitutability is a very crucial aspect of defining a relevant market.[292] Hence, the prime question to be asked is: What is the product? This question focuses on defining the specific AI product or service, including its functionalities and applications, and then further determining its substitutability. The second question to be asked is, who are the consumers? This aims to identify the end users of the AI products on whether they are other tech firms spread across different kinds of industries, data operators or a layman. In an ever-evolving market of AI, these questions remain unresolved. Evidently, ascertaining the appropriate definition for the relevant product market cannot be resolved in abstract; rather, it would entail analysis on a case-by-case basis.[293]

After the contours of market are defined and drawn, the actual conduct of firms in question is subjected to analysis, to determine whether it has or could have an anti-competitive effect on the market. The upcoming section deals with the competition challenges that are present in the AI market and how they can be hazardous to healthy competition in the market.

III. COMPETITIVE HURDLES IN THE AI MARKET

Competition regulators worldwide have been trying to deepen their understanding of AI and are determining the most effective approaches to regulating it.[294] The presence of structural realities, even at times devoid of recent headline-grabbing transactions, makes the prospect of disruption by external challengers increasingly remote – mainly in the case of foundational models, where the sheer scale of computational power and data required for training poses formidable entry barriers.[295] Foundational models are current developments in AI. They are basically large neural networks trained on massive amounts of data. Rather than developing an AI from scratch, developers and data scientists use a foundational model as the square one.[296] They form a very essential aspect of developing AI technology and hence, are vulnerable to being controlled by Big Tech companies.

Much of this challenge is based on the very nature of the technology: access to essential resources for AI development, the requisite access to specialized chips, high-performance computing infrastructure, vast datasets, skilled talent, and vast capital for AI development, all of which find

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[292] Paulo Burnier da Silveria, 'Relevant Market' (*Global Dictionary of Competition Law Concurrences*) <https://www.concurrences.com/en/dictionary/Relevant-market > accessed 13 March 2025

[293] *Supra Note* 9.

[294] Martin Hansen, Lisa Peets and Marianna Drake, 'International developments in AI governance: same goal, different paths (*Thomson Reuters Practical Law,* 30 November 2023) < https://uk.practicallaw.thomsonreuters.com/w-041-5134?transitionType=Default&contextData=(sc.Default)&firstPage=true > accessed 12 March 2025

[295] CRFM, 'On the Opportunities and Risks of Foundation Models' [2021] CL 1

[296] Adam Kolides, 'Artificial Intelligence foundation and pre-trained models: Fundamental, applications, opportunities, and social impacts' in *Simulation Modelling Practice and Theory* (JSimpat 2023)

their concentration among the dominant players[297] such as Google and Amazon. This advantage is further delimited by the fact that most of such enterprises own controlled platforms best positioned to provide AI applications to consumers-including search engines and social media networks.

For the time being, an AI revolution seems highly improbable, brought about by independent disruptors who can take over the legacy tech barons. In the near future, that will add significant weight to the power of existing tech giant players in the development and deployment of products and services enabled by AI-though of course this doesn't mean that they would do so uncontested in the AI market. But history has shown that breaking the hold of monopolization by tech companies is not easy. While the veritable speedy change and plurality[298] of AI development would dilute the immediacy of the case for regulation at present,[299] they also indicate an unsettled market. Such transitional periods entail the two basic risks for competition. First, incumbent firms – whose existing market dominance may be challenged by AI-driven disruptions – could either stifle these disruptions outright or strategically co-opt them to further establish their own power. Second, even new markets emerging under AI patronage may have succumbed to monopolistic habits-without being earned through competition merit, but rather forged through some anti-competitive pacts or exclusionary tactics that stymie possible challengers.

These risks are far from theoretical; dominant technological firms in the past have employed similar tactics to secure or reinforce their market power. Microsoft,[300] for example, tried to ensure that Netscape Navigator does not gain access to the new browser technology, which would start competitive threats in the future.

Then there's Facebook, which uses a different tactic by acquiring potential competition from all directions in order to keep its hold over social media robust.[301] There's also Google, which entered the market as a disruptor[302] and transformed into becoming a monopolist,[303] using exclusionary practices to hold sway over online searches.

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[297] Don Clark, 'How Nvidia built a Competitive Moat Around AI Chips' (*The New York Times* August 2023) <https://www.nytimes.com/2023/08/21/technology/nvidia-ai-chips-gpu.html > accessed 16 March 2025

[298] Harry Guiness, 'The Best Large Language Models (LLMs) in 2025' (*Zapier* February 2025) <https://zapier.com/blog/best-llm/> accessed 18 March 2025

[299] Jonathan Barnett, 'The Case Against Preemptive Antitrust in the Generative Artificial Intelligence Ecosystem' [2024] CLSS 1

[300] USA v. Microsoft Corp, No. 00-5212 (D.C. Cir. 2001)

[301] FTC v. Facebook Inc., 560 F. Supp. 3d 1

[302] Scott Rosenberg, 'Let's Get This Straight: Yes, there is a better search engine' (*Salon* December 1998) < https://www.salon.com/1998/12/21/straight_44/ > accessed 14 March 2025

[303] USA v. Google LLC., 1:23-cv-00108 (E.D. Va.).

IV. UNFAIR PLAY? HARMFUL COMPETITIVE PRACTICES IN AI

Licensing agreements and business deals that might create barriers to access to key AI inputs or distribution channels are a key area of concern. Besides direct investments and strategic alliances, antitrust regulators also look at individual transactions that could potentially harm competition within AI markets or reinforce existing monopolies. The recent probe of Google's exclusive contract with Samsung, which guarantees the pre-installation of Gemini Nano-Google's lightweight AI model on Samsung smartphones, serves as an apt example.[304] While the deal, per se, may not have far-reaching exclusionary effects, it closely resembles the types of exclusive arrangements with which Google has historically sought to entrench its dominance in online search. Should Google succeed in embedding its AI products in a large share of consumer devices, significant entry barriers could be created, enabling the entity to bolster its grip on search and beyond against competitive challenges.

Another concern brought to the fore is the AI-related mergers and investments in which firms employ questionable tactics to override regulatory scrutiny. Regulators are increasingly scrutinizing AI-related investments and mergers for antitrust concerns. In response, some companies seeking access to two critical resources—technology and talent—have structured elaborate deals to circumvent potential regulatory oversight. Amazon, for example, employed co-founders of AI start-up 'Adept', along with about two-thirds of the labour force, who had a nonexclusive license to the start-up's technology.[305] Similarly, Microsoft recruited the team from 'Inflection', an AI company specializing in foundation models and consumer chatbots, while also acquiring rights to its technology.[306] Under the contract, however, it has now shifted to sell its models to enterprise clients rather than selling its chat bot directly to end users. During the current wave of acquisitions, it has been reported that Google has entered into $2.5 billion contracts with Character.AI, hiring its founders and adopting a nonexclusive license to its chatbot technology.[307]

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[304] Foo Yun Chee, 'EU Antitrust regulators want to know if Google and Samsung's chatbot deal hinders rivals' (*Reuters* July 2024) < https://www.reuters.com/technology/artificial-intelligence/eu-antitrust-regulators-want-know-if-google-samsungs-chatbot-deal-hinders-rivals-2024-07-17/ > accessed 14 March 2025

[305] Greg Bensinger and Krystal Hu, 'Amazon lures cofounders from startup Adept to bolster AI efforts' (*Reuters* June 2024) < https://www.reuters.com/technology/amazon-hires-ai-startup-adepts-cofounders-join-its-ai-org-2024-06-28/ > accessed 15 March 2025

[306] Krystal Hu and Harshita Varghese, 'Microsoft pays Inflection $650 mn in licensing deal while poaching top talents, source says' (*Reuters* March 2024) < https://www.reuters.com/technology/microsoft-agreed-pay-inflection-650-mln-while-hiring-its-staff-information-2024-03-21/ > accessed 13 March 2025

[307] 'Google Hires top start-up team, fueling concerns over Big Tech's power in AI' (*The Washington Post* August 2024) < https://www.washingtonpost.com/technology/2024/08/02/google-character-ai-noam-shazeer/ > accessed 12 March 2025

"Acqui-hires," a well-known industry practice in which firms acquire companies mainly for the purpose of acquiring talent, have now acquired a new lease of life by entering into acquisitions for talent and technology without formal acquisition.[308] Both the FTC[309] and the U.K. competition authority[310] have commenced investigation into these transactions as they progress. While they go along their journey, regulators should evaluate these deals on the effects rather than their forms; on whether they have removed the competitive potential from the target AI companies.

The scale and variety of these transactions underscore a period of significant transformation within the AI markets, with dominant tech firms aggressively expanding their reach through investments, partnerships, quasi-acquisitions, and licensing arrangements. Such dominant activity complicates the analysis of market price dynamics and makes it a daunting task to predict what the competitive outcomes of individual deals would translate into.

As AI markets evolve, regulators must distinguish between innate competitive advantages and concerted moves to suffocate market dynamism. Though defining artificial intelligence as an area of innovation rather than one of consolidating monopolistic authority will need sustained hovering from regulators, enforcement efforts will need to be proactive and accompanied by a sophisticated understanding of how competition law principles intersect with the unique features of AI-driven markets.

V. AN EMERGING CHALLENGE IN AI MARKETS: API RESTRICTIONS

The rapid advancement of AI is reshaping industries and fundamentally altering business operations. By 2026, more than 80% of organizations will have integrated APIs, especially in generative AI.[311] Application Programming Interface ["API"] are tools that simplify the integration of AI in businesses. The Internet comprises many independent websites, each built separately, but requires seamless cooperation for a smooth user experience. Application Programming Interfaces (APIs) allow this interaction to happen, born out of necessity and evolving in functionality over the years as companies grow . APIs have long been made available by some of the biggest

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308 Marina Temkin, 'Aqui-hires get leapfrogged in pay and seniority' (*Tech Crunch* August 2024) < https://techcrunch.com/2024/08/18/selling-a-startup-in-an-acqui-hire-is-more-lucrative-than-it-seems-founders-and-vcs-say/ > accessed 18 March 2025

309 Krystal Hu, Greg Bensinger and Jody Godoy, 'Exclusive: FTC seeking details on Amazon deal with AI startup Adept, source says' (*Reuters* July 2024) < https://www.reuters.com/technology/ftc-seeking-details-amazon-deal-with-ai-startup-adept-source-says-2024-07-16/ > accessed 14 March 2025

310 'UK Regulators Probe Microsoft's Hiring of Inflection AI Staff' (*Competition Policy International* July 2024) < https://www.pymnts.com/cpi-posts/uk-regulators-probe-microsofts-hiring-of-inflection-ai-staff/ > accessed 12 March 2025

311'Gartner Says More Than 80% of Enterprises Will Have Used Generative AI APIs or Deployed Generative AI-Enabled Applications by 2026' (*Gartner* October 2023) <https://www.gartner.com/en/newsroom/press-releases/2023-10-11-gartner-says-more-than-80-percent-of-enterprises-will-have-used-generative-ai-apis-or-deployed-generative-ai-enabled-applications-by-2026 > accessed 13 March 2025

technology companies, such as Facebook, Amazon, and Google, to allow smaller companies to take part in a data ecosystem that was largely dominated by a few major players. The platforms then benefited from this because the success of third parties using their APIs generated user engagement and helped in valuable data collection. But in the last few years, leading AI platforms have taken to restricting access to key information and functionalities by tightening API restrictions.[312]

The prime concern for restrictions on API imposed by companies is for true Internet interoperability. Interoperability means that distinct software systems work together with different underlying systems. In internet parlance, interoperability means that different software packages can interchange and make use of one another's data.[313] For this to happen, digital communication entails a shared vocabulary and a defined format for such communication.

An API is a mediator in access to data and system functionality. However, they are neither the primary factor behind a platform's initial rise to dominance nor the central driver of its ongoing success.[314] Instead, APIs essentially act as gatekeepers to vast reservoirs of information that govern business activities and control access based on permission. To draw an analogy, while a bank allows controlled access to funds, API providers may choose to open up their APIs to third parties willing to pay or provide something of value in return. API facilitates data movement in two opposing directions: giving external developers access to internal data and services while garnering insights back from third parties on their users. API basically allows an ecosystem a win-win situation for both parties involved: the platform providers and external developers.

APIs work via standardized protocols that permit outsiders to specify conditions for their access to any kind of information or key functionalities of the AI platform. For instance, when a user looks for nearby restaurants via Google, the API would send a request with information such as latitude and longitude within a specific search radius to Google in a format that Google recognizes. Google then returns structured information that the requesting system can process, for example, restaurant names, locations, and ratings. If the order of inputs were misaligned— for instance, longitude arriving first instead of latitude—the whole result set would be entirely inaccurate.

API development is intended to enhance additional user experience and allow for third-party monetization. When external developers are allowed to create applications that consume existing

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312 'DeepSeek Restricts Access as AI Model Balloons in Popularity' (*PYMNTS* February 2025) <https://www.pymnts.com/news/artificial-intelligence/2025/deepseek-restricts-access-ai-model-balloons-popularity/#:~:text=DeepSeek's%20artificial%20intelligence%20model,6) > accessed 19 March 2025

313 Margaret Rouse, 'Interoperability' (*Techopedia* January 2025) < What is Interoperability? Definition, Benefits & Challenges - Techopedia> accessed 19 March 2025

314 'What is an API?' (*Mulesoft*) < https://www.mulesoft.com/api/what-is-an-api#:~:text=Many%20people%20ask%20themselves%2C%20%E2%80%9CWhat,data%20within%20and%20across%20organizations. > accessed 16 March 2025

data and services, platforms are themselves expanded. The API provider benefits by way of traffic driven to its services or by way of valuable data about users. In their own way, competition among developers in the digital world can bring about APIs that mix the good side of sharing with the protection of proprietary interests, guaranteeing that both the providers and third-party innovators mutually benefit.

Data is the main currency in the digital economy, and slowly but surely, a few major players have emerged as the bigger brokers of this resource.[315] As these companies reach a huge mass of users, the incentives for maintaining open API's decline, leading to a shift towards more restrictive policies. This power consolidation raises alarms that APIs, being the vital connecting thread of the Internet, might be breaking, ultimately reducing the interoperability and, hence, reducing their next coming innovation. While some argue that these major tech firms have rightfully acquired their dominance through consumer trust and market success, others are concerned that the increasingly tight control over data access stifles competition.

The fear is that these massive platforms are deliberately denying newer players access to tools and information that could facilitate innovation, giving an advantage to established players who benefited from earlier openness. Such an arrangement is not just asking new entrants to reinvent the wheel - it is akin to forcing them to reconstruct the fundamental tools required to invent the wheel in the first place. What terrifies scholars is the outlook of fewer companies controlling an ever-proliferating range of Internet services, from email through social media and e-commerce and beyond, leaving consumers with sparse choices and a great deal of control in the hands of so few. While the idea of a monopolized AI market may seem alarmist, there have been many pages in history warning of the dangers of excessive market concentration. The law has long been cognizant of the hazards of such excesses of power; there is a legal framework by which such situations should never worsen and escalate. Competition law was not made to protect the monopolization of the Internet; in fact, it was designed to confront anti-competitive acts to the detriment of consumers. Should courts conclude that the injurious API policies restricting development are against public interest, competition law should therefore extend its protection to ensure that technological advancement remains on the chosen path of the free market.

VI. INTERNATIONAL REGULATORY FRAMEWORKS AND AUTHORITIES

As we have seen the potential hazardous impacts of AI on the market and its apprehensible antitrust conduct, there is a need for legislative bodies to take cognizance of the same. Along with

[315] William Eggers, Rob Hamill and Abed Ali, 'Data as the new currency' [2013] DL 19

that, to ensure the easy implementation of the legislation, certain regulators also need to be assigned for the same.

However, practically governing AI is a difficult task as there still exists a Blackbox problem.[316] Due to this, the root of the problem cannot be detected with accuracy, which creates complexities in drafting straight forward provisions. Even though there is no special or substantive legislation to regulate or govern the activities of AI, there are some countries who are making progress to build a mechanism to regulate AI activities and their impact on the competition in the market. Some of the initiatives taken by the countries are –

A. European Union (EU)

Specific legislations, like the Digital Markets Act[317] and the AI Act[318] have been introduced to regulate AI in certain aspects. Firstly, the AI Act came into force on August 1, 2024, and the procedural powers, like the right of examining the evidence, access to relevant data and documents, are granted to the supervisory agencies, which are transfer able in nature to the competition authorities.

And secondly, the Digital Markets Act (DMA) concentrates on governing the digital platforms which comes under the definition of "gatekeepers" defined in the Act.[319] The applicability of this framework to the AI Market is not direct, but indirectly it can regulate the technological firms which operates in the AI ecosystem, along with the use as well as development of AI. According to the Competition Policy – Annual Report, 2023,[320] the European Commission is of the opinion that there exists a need to adopt advanced evidentiary tools like data, computing analysis and having AI scientists to reach a better understanding of the usage of technologies. The potential application of DMA on the AI market can be as follows-[321]

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316 'AI's Mysterious "Black Box" Problem Explained' (*University of Michigan-Dearborn*, 2025) < https://umdearborn.edu/news/ais-mysterious-black-box-problem-explained > accessed 20 March 2025

317 Regulation (EU) 2022/1925 on contestable and fair markets in the digital sector (Digital Markets Act) [2022] OJ L265/1

318 Regulation (EU) 2024/1234 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) [2024] OJ L123/1

319 European Parliament, 'Report on the Proposal for a Regulation of the European Parliament and of the Council Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) and Amending Certain Union Legislative Acts' (A9-0427/2023, 2023) https://www.europarl.europa.eu/doceo/document/A-9-2023-0427_EN.pdf accessed 20 March 2025

320 European Commission, 'Report on Competition Policy 2023' (2024) https://competition-policy.ec.europa.eu/document/download/ae6ccdee-c097-4197-a1c5-7501c6b6a287_en?filename=annual-competition-report_2023_report_part1_en.pdf accessed 20 March 2025

321 The correct OSCOLA 4th edition citation for the Mayer Brown report would be:
Mayer Brown, 'Expert Q&A on the Competition Law Issues Raised by Generative AI' (July 2024) https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2024/07/expert-qanda-on-the-competition-law-issues-raised-by-generative-ai.pdf accessed 15 March 2025

i. DMA can restrict the companies from using the data across the services and impose certain limitations on the same. Instead of using data obtained from generic consent of the users, the requirement of specific data consent will ensure the transfer of the data for the purpose of training and development of the other application.
ii. The FRAND licensing framework, which is developed in the pharmaceutical and technological industries in the European Union, ensures **free, reasonable and non-discriminatory access** to the datasets. Adoption of the same in the AI Market will keep the dominant AI players in the market from monopolising the same, and there wouldn't be exclusive dealing agreements, causing unfair restriction on the access of the essential datasets and hence anti-competitive effects on the market.
iii. One of the most important objectives of the DMA is to prevent the self-preferencing behaviour, which can also be taken into consideration while regulating the AI landscape.

Another significant component of the DMA is its stipulation that appointed gatekeepers must provide information to the European Commission about several facets of their activities. These include information about algorithms, data use, and testing AI methodologies. Similar demands may be extended to ask for explanations about AI decision-making and transparency about foundational AI models. But as AI models become increasingly advanced, giving straightforward and understandable reasons for their actions is a very challenging task. Mandating such transparency requirements can also risk slowing down the pace of innovation in the field of AI, with the threat of tipping the balance of regulation over technological progress.

Where the European Commission finds fault in the information provided, or in instances where the companies do not comply with reporting requirements, the DMA provides for the Commission the power to engage in further regulation. This can involve issuing penalties or initiating probes into potentially anti-competitive use of AI. As more usage of AI enters core digital services, the regulation will probably adjust to deal with the competition challenges presented by AI-driven platforms.

Even though the DMA doesn't directly regulate AI models, its anti-competitive provisions, transparency provisions, and access to data can influence AI governance in the European Union. The Commission's recent position on AI in the context of the DMA indicates that AI-driven services, especially those serving as gateways between consumers and businesses, are likely to fall under regulatory inspection. As AI keeps evolving digital markets, the intersection of AI regulation and competition law will continue to be an area of paramount interest for policymakers and industry players alike.

B. United Kingdom Regulation

The potential risks that could eventually threaten the competition were observed by the Competition and Markets Authority ["CMA"], which includes –

i. Restricting the access of the controlling inputs to develop high-quality Foundation Models, which may tend to happen in the form of API restrictions, exclusivity agreements with the data providers, etc., to gain market power.
ii. Prominent incumbents might use their positions in consumer or business-to-business markets to manipulate choice in FM services and limit competition in deployment.
iii. It identifies that collaborations among major players might strengthen existing market power positions through the FM value chain.

Apart from this, certain dominant firms are able to utilize network effects and data buildup benefits, making it more difficult for new players to enter. AI relies on massive amounts of data, which results in data hoarding by large firms. Inadequate access to important datasets makes it difficult for small AI startups to enter, lowering innovation and competition.

In contrast to the European Union's DMA, the UK has taken a pro-innovation regulatory route without strict AI-specific legislation. Instead, the UK uses a sectoral and principles-based approach to regulate AI in digital markets. The major regulatory agencies regulating AI are the CMA, which handles inquiries into the effect of AI on competition and ensures fair market practices. The Digital Regulation Cooperation Forum (DRCF) is a collaborative effort between the CMA, the Information Commissioner's Office (ICO), Ofcom, and the Financial Conduct Authority (FCA) with an emphasis on AI regulation. The AI Regulation White Paper (2023)[322] describes the UK approach to regulating AI with a focus on innovation-friendly regulation balanced against managing risks.

The UK Government has embraced a flexible and responsive style of AI regulation based on risk management over hard-law requirements. The AI Regulation White Paper (March 2023) suggests context-oriented regulation, which deputes oversight of AI to current regulatory authorities instead of establishing a single central AI regulator. It suggests principles like safety, transparency, fairness, accountability, and contestability to regulate AI. The Digital Markets, Competition, and Consumers Act, which came into force on 1st January 2025, seeks to advance digital market competition oversight, specifically focusing on big tech companies leveraging AI. It establishes new powers for the CMA to step into AI-led monopolistic actions and issue fines for anti-

[322] Department for Science, Innovation & Technology, 'A Pro-Innovation Approach to AI Regulation' (UK Government, 2023) https://assets.publishing.service.gov.uk/media/64cb71a547915a00142a91c4/a-pro-innovation-approach-to-ai-regulation-amended-web-ready.pdf accessed 20 March 2025

competitive behaviour. In addition, the UK Government is collaborating with the CMA and tech industry innovators to introduce voluntary AI codes of conduct that will provide guidelines for AI innovation, fair competition, and the use of data in a responsible way.

While the UK's light-touch, pro-innovation regulatory environment is designed to support AI development, there are still some challenges. AI price-fixing is hard to identify without an in-depth forensic examination of algorithms. The CMA might need to create AI auditing tools in order to monitor algorithmic competition abuse. Excessive regulation has the potential to strangle AI innovation, reducing the UK's appeal as a location for AI startups. The government has to balance enforcement of competition with promotion of AI-driven growth. AI competition law enforcement needs international cooperation in regulation across borders, particularly with the US and the EU. The CMA is presently actively interacting with international competition authorities in the coordination of AI market rules.

VII. HOW CAN INDIA PROGRESS IN REGULATING AI?

The Competition Commission of India ["CCI"] has conducted market studies, public consultations, and cross-border collaborations to evaluate the influence of AI on competition and align regulations with global best practices. The government has also refined AI policies through NITI Aayog's National Strategy for Artificial Intelligence (2018)[323] to find a balance between innovation and ethics. India invests more than $1.2 billion in AI R&D, with areas of focus in semiconductor manufacturing, computing infrastructure, and startup funding. Unifying global alliances, India has presided over the Global Partnership on AI and conducted the Global IndiaAI Summit for the advancement of ethical AI and technological democratization.[324]

Despite certain progress, certain challenges remain, like the lack of a harmonized AI regulatory environment impedes regulation, which requires specific legislation. Innovation and regulation should be balanced to avoid market distortions. Algorithmic transparency needs to be ensured through explainable AI frameworks, while enhanced enforcement measures and AI-based monitoring mechanisms are required to check anti-competitive conduct.

1. India can adopt a sectoral framework, as with the UK's principles-based regulation of AI, where AI is regulated according to the needs of the respective sector. The CCI can work together with the sector regulators, as with the Reserve Bank of India (RBI) for fintech AI regulation and the Telecom Regulatory Authority of India (TRAI) for telecom markets based on AI.

[323] NITI Aayog, 'National Strategy for Artificial Intelligence' (2023) https://www.niti.gov.in/sites/default/files/2023-03/National-Strategy-for-Artificial-Intelligence.pdf accessed 10 March 2025

[324] 'Global India AI Summit' (*India AI*, 2025) https://indiaai.gov.in/globalindiaaisummit/ accessed 20 March 2025

2. The UK's CMA has identified the role of AI in perpetuating entrenched market positions and limiting entry to essential AI inputs like data and computational resources. India must equip the CCI with sophisticated AI tools to track algorithmic abuse of competition, forestall AI-based price rigging, and uphold fair competition. Enacting AI-specific market research, the likes of which is the UK's Digital Markets, Competition, and Consumers Act (2025), may serve to identify and prevent monopolistic practices in an early stage.
3. The UK CMA has raised concerns about AI-based algorithmic collusion, whereby price algorithms adjust automatically in terms that are adverse to consumers. India's CCI must invest in AI-based competition enforcement technology, including algorithm auditing tools, to identify and sanction AI-based price-fixing and collusion. India may also require independent audits of AI pricing models employed by dominant players in sensitive sectors like healthcare, transportation, and e-commerce.
4. The UK maintains a pro-innovation, risk-based framework for regulating AI that eschews overly legalistic controls while tackling competitive threats. India must balance promoting AI innovation with competition law enforcement to prevent startups and small companies from facing undue compliance burdens. The government may enact voluntary AI ethics guidelines, as proposed in the UK's AI Regulation White Paper, to offer best practices for equitable competition without sacrificing flexibility for nascent AI companies.
5. The EU Commission and UK CMA are already working in tandem with international competition agencies to promote uniformity of AI regulation. India must pursue international collaborations on AI policy-making, especially via institutions like the Global Partnership on AI (GPAI) and coordination with the EU, UK, and US to harmonize AI competition policies. Such actions would enable India to evolve international best practices while retaining regulatory autonomy.

Although current worldwide initiatives are aimed at applications and uses of AI, one of the research gaps is the lack of competition regulation for AI-developing companies. Technology giants with ownership of AI infrastructures, data sets, and cloud computing can indulge in anti-competitive practices such as API restriction, tying AI products, and monopolizing compute resources, making it hard for emerging AI developers to enter the market. In response to this, government authorities and the CCI should take certain steps:

i. AI-Specific M&A Review – Implement compulsory merger reviews for all AI-related takeovers, including those below normal thresholds, to avoid killer acquisitions and monopolization of AI start-ups.

ii. Open Data & Computing Access – Enforce non-discriminatory access to training datasets and public AI cloud infrastructure so that start-ups can utilize necessary computing resources without dependence on big tech companies.
iii. AI Competition Monitoring Task Force – Create a dedicated AI department in CCI to oversee AI-powered anti-competitive behaviour, ensure transparency in AI models, and prevent market dominance.
iv. International Regulatory Coordination – Synchronize India's AI regulations with international frameworks such as the EU's DMA and the UK's CMA to formulate a globally coordinated AI competition regulation.

To provide a level playing field for competition between AI tech companies, India requires robust AI-specific competition laws that avoid API restriction, tying, cloud service monopolization, anti-competitive M&As, and data stockpiling. Creating an AI-specific competition division in CCI, coupled with equitable access requirements for AI infrastructure and datasets, will provide a level playing field for new AI developers in India. India can promote AI innovation while ensuring competitive market forces by learning from the best international practices.

VIII. CONCLUSION

As AI technologies improve, their regulation under current competition laws is still lacking, considering the increasing dominance of a few leading companies. Given the threats of AI monopolization, ranging from limited access to data and computing resources to exclusionary mergers, there is a need to call for immediate action. Competition authorities need to redirect their attention from just monitoring AI-driven companies to examining the AI-developing companies themselves. Currently, there is no specific framework designed to regulate the AI developing companies that hold the potential to create hazardous anti-competitive effects on the market. However, by adopting merger reviews specifically related to AI, providing equal access to key AI resources, and enhancing international cooperation on regulation, authorities can establish a level playing field for AI innovation. Through such focused action, the market for AI has less chance of turning into a threat to fair and healthy competition in the market. Hence, regulators should not be on sidelines as companies jockey for dominant positions in such a rapidly changing market.