DESIGN AS DOMINANCE: DARK PATTERNS AS ANTICOMPETITIVE CONDUCT IN INDIA'S DIGITAL MARKETS

Abstract

Dark patterns have emerged as covert tools of anticompetitive harm in digital markets. This paper examines how these practices entrench the stronghold of dominant platforms in the digitalized market. While India's Competition Act, 2002 recognizes abuse of dominance, its ex-post, price-centric framework struggles to address design-based exclusion. If the Act was built for a traditional economy of tangible goods and clear-cut harms, the Draft Digital Competition Bill, 2024 marks progress by adopting ex-ante rules inspired by the EU's DMA, prohibiting self-preferencing and mandating interoperability. The DDCB is attempting to rewire the regulations for a world where market power is exercised through interface design, data asymmetries, and behavioral nudging.

This paper examines the current regulatory gap by first unpacking how dark patterns function as anticompetitive tools in digital markets. It then critiques the current competition law framework's limitations in addressing these harms and evaluates the promise and pitfalls of the Draft Digital Competition Bill in filling that gap. Ultimately, it argues for a competition regime that does not merely respond to outcomes, but anticipates and prevents manipulative architectures of exclusion before they solidify.

I. INTRODUCTION

Why is it often easier to subscribe to a digital service than cancel it? Why is it so that clicking cancel takes you through five confusing steps while subscribe just takes a simple click? This is in fact the consequence of the new digital economy, where the design of the platform no longer just facilitates choices, but begins to shape them. This is done by nudging, confusing, or simply exhausting the users into compliance. In an economy that is now increasingly being built on subscriptions, such instances are not accidental, they are in fact carefully engineered, strategic, and profit-driven implementations of what are now widely recognized as dark patterns.

In today's fast-paced economy, user attention and data are currencies, and design has turned into an invisible but powerful site of market control. Dark patterns are interface designs that trick or nudge users into decisions they wouldn't normally make,[1] posing a regulatory challenge extending beyond just the obvious issues of consumer protection and privacy laws. In platform-based markets, these patterns have become tools of competitive harm.

In India, anticompetitive practices are governed by the Competition Act, 2002, ("the Act") which has been formulated to detect and prevent harms arising from overt market power. The Act was drafted in a different era, one where industrial players dominated and market dominance was defined more by size than by design. Despite having open-ended standards like prohibition on the abuse of dominance, and allowing for a range of factors to determine appreciable adverse effects on competition, its enforcement framework remains grounded in price-centric analysis. This makes it difficult to capture the subtler forms of power that shape digital markets – especially those embedded in interfaces, algorithms, and behavioral manipulations.

This is not a problem unique to India. Around the world, regulators are waking up to the fact that in digital ecosystems, harm doesn't always look like a monopoly. From buried cancellation options and endless consent loops to misleading product placement and opt-out subscriptions, these techniques don't raise prices, they reduce competition by locking users in and competitors out.[2] As India enters a new regulatory moment, there is a clear need to rethink what constitutes exclusion and

[1] Brignull, H, Leiser, M, Santos, C & Doshi, K, 'Deceptive Patterns (Aka Dark Patterns) - Spreading Awareness since 2010' (*Deceptive Patterns - Home*, 2023) <https://www.deceptive.design/> accessed 25 July 2025

[2] Sinha R and Srivastava A, 'Shady Play: How Tech Giants Use Dark Patterns to Distort Competition - NLIU Law Review' (*NLR Blog*, 2024) <https://nliulawreview.nliu.ac.in/blog/shady-play-how-tech-giants-use-dark-patterns-to-distort-competition/> accessed 24 July 2025

anticompetitive conduct in the digital age, and examining the role of dark patterns in this regard is an important step that must be taken.

II. DARK PATTERNS: INVISIBLE TOOLS OF POWER

Traditionally in competitive theory, market power is often equated with the ability to profitably raise prices or exclude rivals,[3] making the assessment of dominance greatly price-focused. Dominance entails that the undertaking can act appreciably independently of its competitors, customers and ultimately consumers, and is often expressed as the company's ability to profitably increase prices without concern for losing customers to competitors.[4] While digitalisation brings along with it several pro-competitive benefits like encouraging innovation and the creation of new products and services,[5] it also introduces complexities that challenge existing regulatory frameworks and may give rise to anti-competitive practices.

One such practice is the use of dark patterns. The digital space has essentially turned into a strategic site of control, where platforms have found ways to use it to encode their own dominance in the market. Dark patterns, as defined by the Organisation for Economic Co-operation and Development, are user interface designs that subvert or impair user autonomy, decision-making, or choice.[6] They include tactics such as roach-motel designs, confirm shaming, drip pricing, hidden disclosures, and default pre-selections intended to benefit the platform providers at the expense of the users.[7] While initially discussed within the realm of consumer laws and consumer protection, they have clear and growing implications for competition law, especially when deployed by parties with substantial market power.

Antitrust precedents globally have generally described persuasion as a form of competition rather than anticompetitive behavior.[8] The belief is that firms compete by advertising, designing products, and

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[3] Montek M, "Assessing the Importance of Market Power in Competition Investigations," *Economic Conference* (2018) <https://www.cci.gov.in/images/economicconference/en/2assessing-the-importance-of-market-power-in-competition-investigations1652334908.pdf> accessed July 9, 2025

[4] Knapstad T, 'Digital Dominance: Assessing Market Definition and Market Power for Online Platforms under Article 102 TFEU' (2023) 20 European Competition Journal 412

[5] Report of the Committee on Digital Competition Law, Ministry of Corporate Affairs, Government of India, 2024.

[6] OECD, 'Dark Commercial Patterns' (2022) <https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/10/dark-commercial-patterns_9f6169cd/44f5e846-en.pdf> accessed 15 July 2025

[7] Brignull, H, Leiser, M, Santos, C & Doshi, K, 'Deceptive Patterns (Aka Dark Patterns) - Spreading Awareness since 2010' (*Deceptive Patterns - Home*, 2023) <https://www.deceptive.design/> accessed 25 July 2025

[8] Retail Digital Network v. Jacob Appelsmith, No. 13-56069 (9th Cir. 2016)

employing tactics meant to persuade consumers. Even if conduct is false or misleading, antitrust courts may refuse to intervene if no rivals were conventionally foreclosed. In fact, when persuasion causes consumers to purchase more of a good, courts, scholars, and the leading treatise have described this result as procompetitive.[9] This highlights the urgent need for the recognition of the anticompetitive effects of dark patterns.

While traditional antitrust jurisprudence has anchored violations primarily to price effects, the analytical framework is now being expanded to include non-price harms, such as reduced innovation, diminished product quality, and constrained consumer choice within it too. However, it still remains a struggle for courts to operationalize this expanding lens due to the fact that price-based injuries are more straightforward to quantify and causally link to exclusionary conduct.[10] The result is that non-price harms, even when significant, often go under-enforced.

Exclusionary conduct is a kind of anti-competitive conduct that can be employed by an enterprise so as to thwart potential competition; it is essentially an abuse of dominance on the part of the enterprise excluding the other.[11] This typically refers to the establishment of an artificial barrier to entry without a competitive justification.[12] For instance, a subscription trap that makes cancellation intentionally difficult discourages exit in order to consolidate dominance. Amazon's historical subscription flow for Prime: prior to regulatory pushback, the cancellation process required consumers to pass through multiple screens—five on desktop, six on mobile—with deliberate nudges and delays at each stage.[13]

Since attention is the chief commodity of the digital economy, firms design platforms and interfaces to embellish the addictive nature of dopamine: when a person receives positive stimuli at random intervals, dopamine floods the brain which, after repetition, creates dependency.[14] Because one's attention is finite, digital manipulation can erect barriers to entry where consumers compulsively use a platform to the exclusion of upstarts; this can hook users onto the platform even though superior

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[9] Gregory Day and Abby Stemler, 'Are Dark Patterns Anticompetitive?' (2019) 72(1) ALR <https://law.ua.edu/wp-content/uploads/2020/11/1-DayStemler-1-45.pdf> accessed 10 July 2025

[10] ibid.

[11] Rahul Ray, 'Competition Law in the Digital Space: A Study of Exclusionary Conduct by Tech Conglomerates' (2022) 539 ORF <https://www.orfonline.org/public/uploads/posts/pdf/20230814004736.pdf> accessed 10 July 2025

[12] Gregory Day and Abby Stemler, 'Are Dark Patterns Anticompetitive?' (2019) 72(1) ALR <https://law.ua.edu/wp-content/uploads/2020/11/1-DayStemler-1-45.pdf> accessed 10 July 2025

[13] Nylen L, 'FTC Alleges Amazon "tricked and Trapped People" with Its Prime Subscriptions' (*Los Angeles Times*, 21 June 2023) <https://www.latimes.com/business/story/2023-06-21/ftc-sues-amazon-says-it-sabotaged-consumer-attempts-to-cancel-prime> accessed 25 July 2025

[14] Gregory Day and Abby Stemler, 'Are Dark Patterns Anticompetitive?' (2019) 72(1) ALR <https://law.ua.edu/wp-content/uploads/2020/11/1-DayStemler-1-45.pdf> accessed 10 July 2025

interfaces exist.[15] Another way of viewing digital manipulation is that it raises the switching costs of using rival technology. Consider United States v. Microsoft, where Microsoft prevented consumers from deinstalling Internet Explorer. Microsoft Corporation had designed its operating system to make it unsuitable for rival products thus overriding the preferences of consumers in forcing them to use Internet Explorer.[16]

A number of dark patterns may distort consumer behavior to the extent that leads to weakening or distorting competitive pressures, directly or indirectly. For example, if a platform with significant market power employs the Roach Motel method, it may lead a high number of users to believe that unsubscribing from a service is not possible, locking-in users and artificially strengthening its market position.[17]

Due to the increase in such events, focus is now being shifted from dominance in market share to dominance in digital platforms, with access to data proving to be relatively more valuable in asserting dominance. It then becomes essential to examine how the existing legal frameworks, such as India's Competition Act, 2002, engage with or fail to address such forms of behavioral manipulation.

III. OLD LAW, NEW MARKETS: LIMITATIONS OF INDIA'S CURRENT COMPETITION LAW FRAMEWORK

India's Competition Act, 2002, was formulated with a forward-looking, effects-based approach. Unlike its predecessor, the Monopolies and Restrictive Trade Practices Act, it adopts a rule of reason standard[18], evaluating market conduct based on appreciable adverse effects on competition (AAEC), rather than the formalistic definition of dominance or abuse. The Act also empowers the Competition Commission of India (CCI) to investigate abuse of dominant position,[19] anti-competitive agreements,[20] and combinations,[21] that may threaten the competitive economy. It also grants them wide discretion

[15] ibid.
[16] ibid.
[17] Santos C, Morozovaite V and De Conca S, 'No Harm No Foul: How Harms Caused by Dark Patterns Are Conceptualised and Tackled under EU Data Protection, Consumer and Competition Laws' (2024) Information & Communications Technology Law
[18] The Law Institute, 'India's Milestone: The Enactment of the Competition Act, 2002' (2025) <https://thelaw.institute/trade-secrets-competition-law-and-protection-of-tce/indias-competition-act-enactment-2002/#the-paradigm-shift-from-mrtp-to-the-competition-act> accessed 25 July 2025
[19] Competition Act 2002, s. 4
[20] Competition Act 2002, s. 3
[21] Competition Act 2002, s. 5, 6

to assess factors such as creation of barriers to entry,[22] consumer harm,[23] and foreclosure effects,[24] to say the least.

Given the flexibility in determining what constitutes an anticompetitive act, one might argue that the law is already equipped to deal with manipulative digital conduct. After all, the definition of "dominant position" does not really talk about market share but includes the ability to operate independently of prevailing competitive forces or affect its competitors or consumers or the relevant market in its favor, both of which can be used to bring digital markets into its ambit.[25] This definition does provide the authorities with a legal foothold to address dark patterns with respect to interface-level exclusions and the like. However, despite the flexibility, the enforcement of the Act is not yet digitally sensitive. With the increasing digitization of the economy, it is the need of the hour for the legal architecture to catch up with the various ways market abuse occurs today, with manipulation being experienced differently by different users.

One of the major problems with the Competition Act is that warrants penalizing anti-competitive conduct only after it has caused measurable harm. This is because it uses an ex-post, effects-based enforcement model, something that has traditionally been favored to avoid over-regulation and stifling of innovation. But it has been found that this rationale does not hold well in digital markets where the necessity of demonstrating appreciable adverse effects on competition can create a lag in addressing harms. Investigations into incumbent players under the Competition Act, which begin after a contravention has occurred, are resource-intensive and time-consuming. In the meanwhile, the market may irreversibly tip in favor of the incumbent and consequently drive out competitors. The harm thus caused is irremediable ex post facto. The benefits of early detection and intervention in digital markets then can be said to outweigh the costs associated with over-regulation.[26]

Moreover, the Act's legal architecture remains deeply rooted in price-based structures which struggle to capture the subtleties of non-price consumer harm. In zero-price markets such as those offered by Google or Facebook, the established focus of price as a marker of competition becomes ineffectual. Courts have historically struggled to accept degraded user experience, loss of innovation, or coercive

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[22] Competition Act 2002, s. 19(a)
[23] Competition Act 2002, s. 19(d)
[24] Competition Act 2002, s. 19(c)
[25] Competition Act 2002, s. 4
[26] Congressional Research Service, 'Antitrust Reform and Big-tech firms' (2023) <https://www.congress.gov/crs-product/LSB10889> accessed 10 July 2025

design as indicators of harm in the absence of price increases.[27] This reluctance, the doctrinal rigidity, stems from the statutory emphasis on quantifiable consumer harm. The necessity of proving causal links between interface manipulation and market foreclosure places an unreasonably high evidentiary burden on complainants. On the other hand, institutional constraints including the lack of requirement of technical expertise in behavioral design and data analysis on the competition commission also erects yet another obstacle aiding in limiting the CCI's capacity to evaluate new-age market harms.

The Act intervenes primarily on the basis of dominance under Section 4, and abuse of dominance is a necessary threshold for action. However, digital markets often defy traditional indicators of dominance, such as price manipulation or market share, and rely instead on user engagement, data control, and network effects. Data is a major resource, collected in vast volumes by digital firms and utilized to reinforce their position, often in markets where services appear free. The implicit price here is the data that the user parts with, creating a hidden transactional layer not accounted for in traditional antitrust assessments.[28] Given the unique and self-reinforcing features at play in digital markets, pegging the CCI's intervention to an ex-post facto demonstration of 'dominance' may result in situations where large digital enterprises, despite having a significant presence and the ability to influence markets, may escape timely scrutiny.[29] Many powerful digital firms may not appear "dominant" in the conventional sense, even though they have a significant market influence. So, the reliance on conventional dominance as a precondition for action is increasingly outdated in the digital context.

Another issue that arises is due to the fragmented nature of the legal framework that governs these manipulative designs, with their regulation divided across the Consumer Protection Act, 2019, under which the Guidelines for Prevention and Regulation of Dark Patterns, 2023, have been formulated, and the recently enacted Digital Personal Data Protection Act, 2023. These two along with the Competition Act, 2002, address distinct dimensions of harm - consumer deception, breach of privacy and data misuse, and market distortion. Despite this being a concern for various aspects of the law, none of them can be said to be sufficiently equipped to capture the cumulative and cross-dimensional harm presented by dark patterns. The Consumer Protection Act, 2019 targets misleading conduct but fall short when manipulation is subtle or interface-based. The DPDP Act, 2023 emphasizes consent

[27] Khan L, 'Amazon's Antitrust Paradox' (2022) 126 Yale Law Journal 710
[28] Chris Jay Hoofnagle and Jan Whittington, 'Free: Accounting for the Costs of the Internet's Most Popular Price' (2014) UCLA Law Review 61 <https://www.uclalawreview.org/pdf/61-3-2.pdf> accessed 10 July 2025
[29] Report of the Committee on Digital Competition Law, Ministry of Corporate Affairs, Government of India, 2024.

but struggles with dark patterns, and the Competition Act, 2002, overlooks the role of digital manipulation. Dominant platforms exploit this disjointed oversight, what harms users under one law may not qualify as abuse under another.

The Committee on Digital Competition Law ("CDCL") was accordingly set up to discuss ex-ante regulations for the digital markets. The Committee believes that amending the inherent framework of the Competition Act which primarily relies on an ex-post enforcement model to intervene against large digital enterprises may result in uncertainty and therefore protracted litigations. The Act's sector-agnostic design turns into a constraint in the case of digital markets. Integrating an ex-ante framework into the Competition Act would distort its original purpose and lead to legal ambiguities. Given the distinctive challenges of digital ecosystems, the Committee recommended the enactment of a separate legislation rather than overburdening the existing framework.[30] In formulating such a law, India could draw significant guidance from the European Union's Digital Markets Act ("DMA"), a regime that marks a global shift toward proactive regulation of dominant digital gatekeepers.

IV. GLOBAL REGULATORY TRENDS: THE DMA'S EX-ANTE MODEL AND INTERFACE FAIRNESS

The global regulatory landscape has witnessed a significant shift in its approach towards dark patterns and design-based manipulation, and their anticompetitive effects. Jurisdictions like the European Union, the United Kingdon, Germany, and the United States are now actively advancing pre-emptive, behavioral, and interface-sensitive regulatory strategies.

The European Union offers one of the clearest examples of a jurisdiction that has moved beyond a narrow, price-focused competition regime to one that tackles the conduct of powerful digital platforms ex ante. While the Treaty on the Functioning of the European Union (TFEU) has long allowed ex-post enforcement, these investigations often lag behind technological development and fail to prevent irreparable market tipping. Recognizing the limitation of their enforcement mechanism, the EU enacted the Digital Markets Acts in 2022 in order to proactively regulate platforms whose entrenched positions allow them to set the terms of access to entire digital sectors.[31] These platforms were essentially "gatekeepers", providing at least one of the ten core platform services listed in the DMA.[32] It prescribes a set of ex-ante obligations, including ban on self-preferencing, requirements for

[30] ibid.
[31] EC, About the Digital Markets Act <https://digital-markets-act.ec.europa.eu/about-dma_en> accessed 11 July 2025.
[32] ibid.

interoperability with third party software and hardware, and restrictions on non-public data use.[33] Essentially, the DMA does not hinge on harm to price or output, but rather on platform conduct that reduces contestability, exploits data asymmetries, or enforces architectural lock-in.

Early enforcement is already visible: in 2024 the EC launched investigations into Apple, Alphabet, and Meta under the new DMA regime, focusing on app-store access, search result ranking, and interoperability obligations.[34] What sets the DMA apart is that it aims to prevent default biases, enabling choice and portability, and restraining covert data-driven gatekeeping. It makes sure that the law addresses how power is exercised through design, design defaults, and data control—not merely through structural size or pricing power.

From a global regulatory perspective, the DMA now serves as a blueprint for emerging regulatory regimes in jurisdictions like India's Draft Digital Competition Bill (DDCB), which mirrors many of the DMA's interface-sensitive conduct-based interventions. As the DMA formally entered into force in November 2022 (applicability by May 2023)[35], its design and architecture have informed legislative drafts seeking to rebalance digital power through proactive, behaviorally informed rules, rather than reactive adjudications alone.

There is growing global recognition that the price-centric, ex-post model of traditional antitrust is no longer sufficient in digital markets.[36] The requirements set out by DMA: uninstallability of pre-installed apps, user choice screens, data portability, and prohibition of non-consensual cross-use of data, reflect a regulatory approach that blends competition law, consumer protection, and data privacy safeguards. Commission officials and policy observers have noted how the DMA stresses fair design and consent, not just economic structure, establishing a new digital regulatory lexicon that considers user autonomy and interface norms central to market fairness.[37]

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[33] ibid.

[34] EC, Commission opens non-compliance investigations against Alphabet, Apple and Meta under the Digital Markets Act (25 March 2024) <https://digital-markets-act.ec.europa.eu/commission-opens-non-compliance-investigations-against-alphabet-apple-and-meta-under-digital-markets-2024-03-25_en#:~:text=Today%2C%20the%20European%20Commission%20opened%20proceedings%20under%20the,effective%20compliance%20of%20their%20obligations%20under%20the%20DMA> accessed 12 July 2025

[35] EC, About the Digital Markets Act <https://digital-markets-act.ec.europa.eu/about-dma_en> accessed 11 July 2025.

[36] Shilpa Das, 'Ex-Ante Regulation: An Evolving Need in Digital Markets' (2024) 5(1) CCIJOCLP <https://doi.org/10.54425/ccijoclp.v5.182> accessed 8 July 2024t

[37] Gaon A and Reinfeld Y, 'Advancing Fair Digital Competition: A Closer Look at the DMA Framework' (2024) 3 Journal of Law, Market & Innovation 358

So, the DMA represents both a doctrinal and practical evolution in competition regulation. Rather than treating market power as tied solely to size or price effects, it acknowledges the various levers through which dominance operates, namely, design defaults, interface steering, and data control, and offers a toolkit to prevent anticompetitive entrenchment before its effects become irreversible. These actions demonstrate and indicate a paradigmatic shift. Despite not being considered earlier on, dark patterns are now increasingly treated as anti-competitive acts. This has led to the regulatory attention being shifted to design and its role in competition law, how they shape choices to benefit the incumbents. Taking inspiration, and also caution from the DMA, India is also moving forward following a similar model through its digital competition reforms.

V. THE PROMISE OF THE DRAFT DIGITAL COMPETITION BILL: A NEW ANTITRUST FRONTIER

The COVID-19 pandemic brought along with it a significant acceleration in the digitization of the Indian economy. Social distancing guidelines led to heavy reliance on deliveries from e-commerce platforms and almost exclusively in some areas such as groceries and food, medicines, entertainment, digital health services, online learning, contactless digital payments, etc., which had the effect of driving new consumer bases online.[38] Thus, the pandemic considerably changed the face of marketplaces in India and turned several businesses into online platforms. However, this rise comes along with the concentration of the digital market with a few large digital enterprises exercising major control and influence over the market, giving them an edge over other business users and start-ups. This ultimately makes smaller digital enterprises and start-ups dependent on large digital enterprises and gives rise to an imbalance in bargaining power and information asymmetry in the digital market.[39] Thus, anti-competitive conduct by existing large digital enterprises must be addressed to make sure that emerging digital enterprises that have the capacity to grow into global players.

This is why the CDCL was set up, and the fruits of the Committee's labor culminated in the form of the Draft Digital Competition Bill, 2024, which represents a long-awaited pivot toward ex-ante regulation of digital markets, moving beyond the traditional ex-post, rule-of-reason framework governing the Competition Act, 2002. The DMA stood as an inspiration to this Bill, which seeks to

[38] Ankita Sharma, 'Covid-19 has accelerated India's digital reset' (World Economic Forum, August 2020) <https://www.weforum.org/stories/2020/08/covid-19-has-accelerated-india-s-digital-reset/> accessed 10 July 2025
[39] CCI, 'Market Study on E-commerce in India: Key Findings and Observations' (8 January 2020) <https://www.cci.gov.in/economics-research/market-studies/details/18/6> accessed 11 July 2025

identify and regulate the conduct of Systematically Significant Digital Enterprises (SSDEs), enterprises that have a significant presence in the provision of a Core Digital Service in India and the ability to influence the Indian digital market.[40]

Under the DDCB, an enterprise can be designated as an SSDE if it meets thresholds related to turnover, user base, data collection intensity, and economic dependence, signaling a shift from market share as the primary determinant of dominance to a broader, conduct-based assessment of power. Notably, the Bill mandates obligations on SSDEs in areas that directly implicate design-based and data-driven exclusion. Section 11, for example, prohibits self-preferencing, including in search rankings, recommendation systems, or default settings, unless objectively justified.[41] This speaks directly to scenarios like Amazon privileging its in-house products in search listings[42] or Google prioritizing its ecosystem apps in Android devices.[43] By disallowing such conduct ex ante, the Bill not only targets the outcome (foreclosure) but the mechanism (interface manipulation) through which dominance is entrenched.

Section 13 addresses non-interoperability, requiring SSDEs to enable access and compatibility across services and platforms, preventing the restriction of third-party applications.[44] This clause has important implications for data portability, user lock-in, and network effects, especially in ecosystems where seamless switching is made deliberately difficult through design choices. The network effect is essentially a phenomenon whereby a product or service gains additional value as more people use it. This concept is particularly relevant in the realms of technology and social media, where the utility of a platform increases with its user base.[45] This can be seen with technology giant Apple too, with its products, especially smartphones, having an increasingly large user base. This large user base then increases the brand's utility in one's mind, giving rise to the network effect. This network effect, if accompanied with restricted, or no inter-operability, gives rise to a lock-in effect. It is a result of this effect that the DOJ in the United States of America has filed a lawsuit against Apple claiming that it

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[40] Draft Digital Competition Bill, s. 3
[41] ibid, s. 11
[42] Fuqua School of Business, 'Why Amazon's Private Labels Hurt Consumers More than Third-Party Sellers' (*Forbes India*, 2025) <https://www.forbesindia.com/article/fuqua-school-of-business/why-amazons-private-labels-hurt-consumers-more-than-thirdparty-sellers/96429/1> accessed 25 July 2025
[43] Sakshi Sharma, 'Google LLC V. Competition Commission of India' (*Centre for Research in Competition Law & Policy*, 2023) <https://crclp.nliu.ac.in/google-llc-v-competition-commission-of-india/> accessed 25 July 2025
[44] Draft Digital Competition Bill, s. 13
[45] 'What is a Network Effect in Business' (*Business Case Studies*, 4 March 2025) <https://businesscasestudies.co.uk/what-is-a-network-effect-in-business/> accessed 13 July 2025

has monopolized the smartphone market.[46]The opacity and friction embedded in Amazon's Prime unsubscription flow, infamously dubbed the "Iliad Flow" by the FTC, illustrate how even non-monetary frictions can trap users and deter competition.[47] By mandating interoperability and reducing technical and design-based barriers to switching, the Bill implicitly recognizes interface architecture as a structural lever of market power.

Interestingly, some of the strongest opposition to the proposed Digital Competition Bill came from the very platforms it seeks to regulate. Amazon, for instance, argued that ex-ante regulation would be excessive and unnecessary, especially since it's already subject to FDI rules.[48] But framing this as a concern about "overregulation" ignores what's really at stake – platforms like Amazon aren't just worried about compliance burdens; they're worried that this kind of law might finally start to chip away at their structural advantages.

Google, similarly, warned that most global regimes are still untested and that new rules should be phased in slowly, based on consultation and evidence. It stressed that any SSDE, designations should be narrowly tailored and reviewed regularly.[49] While none of this sounds unreasonable on the surface, it's hard to miss the subtext: a desire to slow things down and dilute the strength of any real intervention. What these submissions have in common is not just hesitation, but a clear discomfort with a future where dominance could be curtailed through proactive regulation.

These provisions do exhibit an evolution, a significant departure from the Competition Act, 2002. Despite the progressive stances taken in the DDCB, with it coming in as a much-needed intervention, it is not without its limitations and potential pitfalls.

First, the absence of explicit references to dark patterns or manipulative design practices risks creating interpretive ambiguity. Although some clauses, like those on self-preferencing or interoperability, clearly intersect with interface design, the Bill stops short of naming "dark patterns" as a regulatory category or identifying behavioral manipulation as an abuse in itself. This omission is critical because it fails to foreground the experiential and cognitive harm design manipulation causes to consumers.

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[46] Aaron Kamath, 'The DOJ's Antitrust Complaint Could Change Apple the Way We Know It' (*BTLJ Blog*, 13 July 2024) <https://btlj.org/2024/07/the-dojs-antitrust-complaint-could-change-apple-the-way-we-know-it/#note-7> accessed 14 July 2024

[47] Gray CM, Mildner T and Gairola R, 'Getting Trapped in Amazon's "Iliad Flow": A Foundation for the Temporal Analysis of Dark Patterns' [2025] Proceedings of the 2025 CHI Conference on Human Factors in Computing Systems 1

[48] Report of the Committee on Digital Competition Law, Ministry of Corporate Affairs, Government of India, 2024.

[49] ibid.

Second, the jurisdictional overlap risk existing with respect to the Competition Act 2002 has not been taken care of and persists between the DDCB and areas of consumer protection and data privacy. Without clear demarcation or inter-agency coordination, enforcement might become fragmented, or worse, inconsistent, where one regulator deems a design as anti-competitive while another sees it merely as misleading.

Third, the DDCB appears to inherit a narrow platform-centric definition of power, focused largely on vertically integrated gatekeepers. This may inadvertently leave out other actors who, while not gatekeepers, still deploy dark patterns at scale—for example, mid-size e-commerce aggregators or subscription platforms. In this sense, the Bill risks replicating the very threshold problem it seeks to solve: by concentrating scrutiny only on the largest players, it might allow pervasive behavioral harms to persist unchecked in other digital segments.

Finally, implementation remains a major concern. While the Bill proposes a Digital Competition Commission to enforce these rules, questions regarding capacity and expertise, and regulatory concerns still remain. Interface design and behavioral manipulation are fast-evolving domains; enforcement must be equally adaptive.

The DDCB represents a critical step forward by adopting a preventive rather than a punitive structure, one that seeks to disable exclusion at the outset itself. It acknowledges that platform power is not just economic but architectural, but for the Bill to truly achieve its promise, it must make design transparency, user autonomy, and cross-regulatory coordination central to its implementation.

VI. CONCLUSION

The fight for consumer choice in the digital economy has moved beyond the traditional economic of pricing, which has now been taken over by interface designs and the manipulation of digital choices. In today's platform monopoly-led economy, competition is being determined on the basis of how options are displayed, or even obscured. One cannot say that dark patterns directly impact the competitiveness of the economy by violating the user experience, they are more of a market distortion which can lead to anticompetitive effects. This is what works in the favor of those who employ these methods, they stifle competition without any explicit transgression of conventional competition norms.

Due to this evolving landscape, India's approach towards competition law is now faced with even more limitations, with its conceptions of abuse and dominance rooted too narrowly with regards to the broad meaning that can be attributed to them in the contemporary world. Even if these meanings are expanded, the procedural mechanism of the Competition Act, 2002, would fail to react sufficiently and effectively to design-based exclusion.

The interface manipulation and data-driven behavioral targeting do not easily fit the existing frameworks, for instance, Section 3 for anti-competitive agreements or Section 4 for abuse of dominance, without the doctrinal interpretation being broadened. This incompatibility necessitates a step forward like the Draft Digital Competition Bill, which shifts away from market structure to platform conduct. Its ex-ante strategy, sector-specific prohibitions of conduct, and taking into account issues such as interoperability and self-preferencing reflect a legislative appreciation of the multi-faceted character of digital power relations.

But this progressive approach needs to evolve further. An entire regulatory framework needs to incorporate behavioral economics with ethics of interfaces as well as the application of competition law. Banning self-preferencing or imposing data portability is not enough if consumers are still locked in deceptive interfaces that never let them out. Real competition in digital markets will only flourish when consumers are not just legally protected but also actually empowered, and when markets are truly liberated.

Finally, considering the place of dark patterns in creating digital market outcomes is a question that goes beyond consumer protection; it is the question of how the very nature of competition is to be secured. If design is a new form of dominance, then regulatory systems have to become proficient at reading its hidden logic. Whether we can have viable fair digital markets is contingent on the law's ability to view the screen not merely as a marketplace, but as a battlefield for power.