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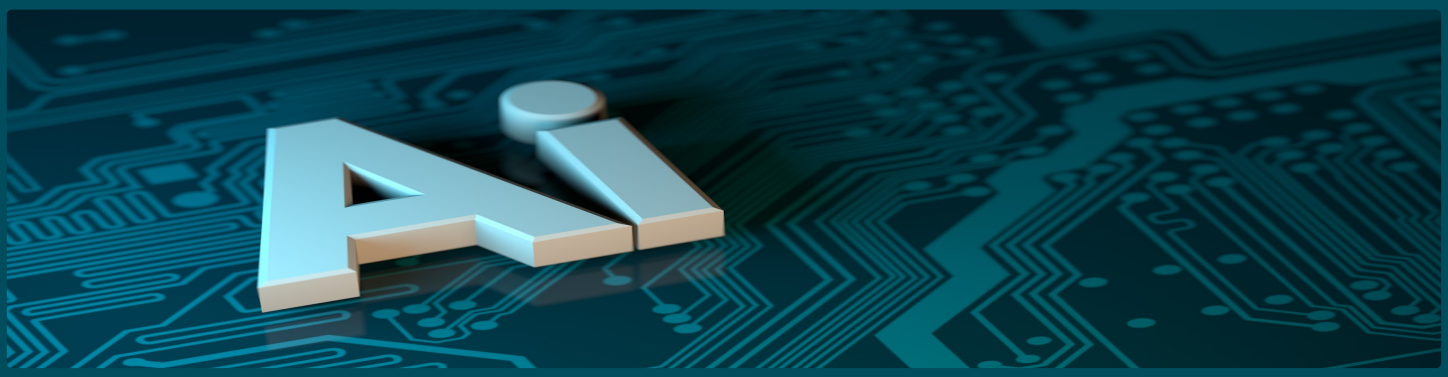

COMPETITION ACT

Artificial Intelligence and Competition Law: CCI’s Analysis of the Market Study on AI and Competition Report

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Introduction: Why AI Has Become a Competition Law Question

Artificial Intelligence (AI) has moved beyond being a technological innovation, it is now a structural force in shaping modern markets. The Competition Commission of India's (CCI) recent market study on Artificial Intelligence and Competition highlights this transformation. AI systems today influence how prices are set, how consumers are targeted, and how digital ecosystems operate. As machine learning models autonomously decide what to recommend, what to charge, or which data to prioritise, competition is no longer determined solely by human intent but also by algorithmic logic.

The CCI's study, undertaken through the Management Development Institute (MDI), Gurgaon, recognises that AI is a double-edged sword: it can promote efficiency, innovation, and consumer welfare, but can equally distort markets through opaque, exclusionary, or collusive behaviour. The report thus is both an analytical baseline and a policy blueprint for aligning competition law, consumer protection, and data regulation in India's emerging AI economy.

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AI's Impact on Marketplaces: From Innovation to Concentration

The study shows that AI is driving growth across sectors like banking, insurance, e-commerce, logistics, marketing, and healthcare. Organizations that successfully integrate AI gain major advantages in cost efficiency, customer engagement, and predictive analytics. Yet, this very transformation introduces a structural imbalance: a few large players dominate the AI stack, controlling the critical layers of data, compute, and algorithms.

At the data layer, entities like AWS, Google, and Microsoft Azure dominate global datasets and training infrastructure. At the infrastructure layer, chip manufacturers such as NVIDIA, Intel, and AMD control essential computing resources. These layers form the foundation upon which downstream startups and user industries operate. As a result, control over AI infrastructure creates entry barriers, making it difficult for smaller players to compete.

This concentration of market power is economic as much as technological. Firms with privileged access to large datasets and superior computing power can engage in "ecosystem lock-in", where users, developers, and advertisers become dependent on a single ecosystem for AI services. This challenges the fundamental goal of competition law: ensuring contestable and fair markets.

Competition Law and AI: Rethinking Enforcement in the Algorithmic Age

Competition law in India, under the Competition Act, 2002, was designed to be sector-agnostic. However, AI's autonomous and self-learning characteristics test the boundaries of traditional enforcement tools. The CCI identifies multiple forms of AI-enabled

anti-competitive conduct, each requiring a nuanced approach.

a. Algorithmic Collusion and Tacit Coordination

AI can enable what economists call “tacit collusion” without any explicit agreement between firms. Self-learning algorithms may observe competitors’ pricing patterns and adjust prices accordingly achieving cartel-like outcomes without communication. Such conduct challenges the CCI’s ability to prove agreement or concerted practice, which is central to Section 3 of the Act.
The study references global literature on “secondary algorithmic collusion”, where pricing algorithms, particularly “hub and spoke” models using common software, result in market-wide price alignment.

b. Price Discrimination and Personalised Pricing

AI-driven dynamic pricing allows firms to offer different prices to different consumers based on behavioural or demographic data. While economically efficient in theory, such personalised pricing risks consumer harm when used to exploit vulnerable users or suppress price transparency. The CCI warns that such practices may lead to consumer exclusion and loss of welfare, especially where users are unaware of algorithmic profiling.

c. Entry Barriers and Data Dominance

AI markets exhibit **“data-driven network effects”**, the more data an entity has, the better its AI models become, attracting even more users and data. This creates a feedback loop favouring incumbents. Limited access to high-quality datasets, cloud computing, and skilled manpower further raises barriers for small and medium enterprises (MSMEs), stifling innovation and reducing market dynamism.

d. Mergers, Acquisitions, and Partnership

The CCI’s study observes that players in the AI industry are increasingly pursuing mergers, acquisitions, and partnerships to expand their presence across various layers of the AI stack and gain access to critical inputs such as data, technology, compute resources, and human expertise. While such strategies can drive innovation and growth, the report cautions that they may also raise competition concerns under certain conditions, warranting closer scrutiny by competition authorities. Reflecting this evolving risk, the Competition (Amendment) Act, 2023 introduces deal-value thresholds, enabling the CCI to examine acquisitions in the digital and AI sectors that may not meet traditional turnover or asset criteria but hold significant strategic importance.

The Role of the CCI: From Enforcement to Ecosystem Governance

The CCI’s study signals a shift from reactive enforcement to proactive ecosystem monitoring. Recognising the speed and opacity of AI markets, the Commission proposes a multi-dimensional action plan for promoting competition and responsible innovation.

a. Self-Audit Framework for AI Systems

Enterprises deploying AI are encouraged to conduct periodic competition compliance audits. These self-assessments should evaluate whether:

- AI models engage in unintended price coordination;
- consumer data is being used fairly and transparently;
- algorithms produce exclusionary outcomes or favour certain suppliers.

By promoting internal accountability, CCI aims to create a culture of preventive compliance rather than post-facto liability.

b. Transparency and Information Disclosure

The report highlights that opacity in AI decision-making can harm both markets and consumers. It recommends that firms disclose key aspects of AI functioning, such as algorithmic objectives, data sources, and performance outcomes without compromising proprietary information. This encourages trust and contestability, ensuring consumers and regulators understand how automated decisions are made.

c. Advocacy and Institutional Capacity

The CCI plans to establish a Digital Markets and AI Think Tank, enhance its technical infrastructure, and conduct advocacy workshops on “AI and Competition Compliance”. Importantly, it also calls for inter-regulatory coordination particularly between the CCI, the Ministry of Electronics and Information Technology (MeitY), and the Data Protection Board to harmonise rules

governing AI, data privacy, and consumer protection.

5. The Consumer Law Interplay: Data, Fairness, and Transparency

The rise of AI-driven markets has blurred the traditional boundary between competition and consumer law. Under the Digital Personal Data Protection Act, 2023 (DPDPA), firms are required to ensure fair, lawful, and transparent processing of personal data. However, when such data fuels targeted advertising or dynamic pricing, data protection violations may also constitute competition harm.

For instance, exclusive access to personal data allows dominant firms to refine their algorithms, creating a data monopoly that excludes rivals. Conversely, deceptive or manipulative algorithmic design, commonly termed "dark patterns" can mislead consumers and distort market choice, falling afoul of both consumer protection and competition law.

In this context, AI regulation must operate on three fronts:

1. **Privacy protection**, ensuring individuals' control over their data.
2. **Transparency**, enabling informed consumer consent.
3. **Fair competition**, preventing monopolistic control over data and algorithms.

The CCI thus positions itself as part of a regulatory triadalongside MeitY and the Data Protection Board to ensure that AI development remains consumer-centric and competition-compliant.

Defining the Line: What Is Acceptable, What Is Not

The CCI's report draws a pragmatic distinction between **innovation that enhances welfare** and **AI conduct that distorts competition**.

Acceptable AI Practices	Anti-Competitive or Harmful AI Conduct
Use of AI for operational efficiency, cost reduction, and innovation.	Use of algorithms to coordinate pricing or restrict output.
Open-source AI tools that promote interoperability and wider access.	Closed ecosystems that exclude rivals or create dependency.
Transparent and explainable AI-driven decision systems.	Opaque or discriminatory AI that manipulates consumer behaviour.
Data-sharing initiatives under fair, non-discriminatory terms.	Data hoarding or exclusive partnerships restricting competition.

The CCI thus sets ethical boundaries for algorithmic conduct, innovation is encouraged, but opacity and manipulation are not. The guiding principle is clear: AI must remain a tool for competition, not a substitute for it.

The Global Context: India's Emerging Model

India's regulatory posture mirrors global trends yet adapts them to its domestic digital ecosystem.

- The **EU AI Act (2024)** adopts a risk-based approach, classifying AI applications by potential harm.
- The **US Federal Trade Commission (FTC)** increasingly treats AI misrepresentation and bias as unfair trade practices.
- The **OECD** calls for algorithmic accountability and cross-border cooperation among competition authorities.

The CCI's report reflects an **Indian synthesis**, balancing innovation incentives with strong legal oversight. It aligns with the Digital Competition Bill under consideration, which will introduce ex-ante obligations for "Systemically Significant Digital Enterprises (SSDEs)" a step similar to the EU's Digital Markets Act.

Conclusion: Toward a Fair and Competitive AI Economy

The CCI's Artificial Intelligence and Competition study marks a turning point in India's regulatory evolution. By moving beyond punitive enforcement to systemic governance, the CCI recognises that AI cannot be policed by traditional tools alone. Instead, responsible innovation, algorithmic transparency, and regulatory coordination are the new pillars of fair competition.

In defining what is acceptable and what crosses the line, the CCI is not merely interpreting competition law, it is shaping the ethical and economic framework for India's AI future. The goal is not to restrain technology but to ensure that it serves markets

that are open, fair, and competitive, and consumers who are empowered, informed, and protected.

For more details, write to us at: contact@indialaw.in

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