THE STRUCTURAL ROLE OF PRIVATE ENFORCEMENT IN DIGITAL MARKETS: AN INDIAN COMPETITION LAW PERSPECTIVE

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ABSTRACT

Focus on consumer data and privacy in competition law has parallelly coincided with the rise in economies based on data-driven services in the digital market sphere. The alarming rise of Big Tech has led Competition Authorities across the EU, UK and US to introduce new legislations in the area. These implemented legislations have stretched their applicability across multiple areas of regulation. Taking a cue from the same, India is introducing the Digital Competition Act. However, an area that is turned a blind eye to, especially in India, is the role of private enforcement, especially for compensation claims by consumers. Hence through this piece, the authors make a case for an increased need for introducing a mechanism for availing antitrust damages within the Digital Competition Act. The piece describes the current private enforcement or antitrust

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damage provisions with their lacunae and highlights structural methods to overcome those lacunae to evolve a better system going ahead. The piece includes a multi-jurisdictional comparison with the ongoing mechanism for antitrust claims from our peers abroad. The authors further analyse the inability of the Indian regulator to enforce private actions by consumers. In doing so, the authors advance a two-step suggestion, the first being to increase guidance in law and the second being expanding avenues to address compensation concerns. Private compensation will give more teeth to fight against big tech and damages. Though punitive, it will act as a deterrent towards the abusive practices of Big Tech. The authors additionally propose a conducive private system for compensation claims from Competition concerns without altering the role of public systems in place.

Keywords: *Private Enforcement, Abuse of Dominance, Digital Markets, DMA, Antitrust Compensation, Big Tech, Digital India*

I. INTRODUCTION

Considerations regarding the effects of digital platforms on our economy and society are expanding along with their size and significance. Numerous Big Tech giants, including Google, Facebook, Apple, and Amazon ("**GAFA**"), have largely divided and controlled digital markets, which present enormous business opportunities. In fact, just 10 years ago, none of these companies were among the top

ten by market capitalization; today, all four are among the top six.[1] One of the reasons for this growth essentially arose from 'killer acquisitions,' wherein Big Techs acquire their rivals or upcoming tech players to establish super domination across multiple markets. This domination makes it difficult for new players to enter the market and for existing players to sustain in the market. Such a foreclosure has been identified as a core concern of abuse of dominant position by Big Tech in various jurisdictions, including India.[2]

The incessant rise in the digital market has created numerous roadblocks for enforcement in most competition jurisdictions including the United States of America ("**USA**"), the European Union ("**EU**"), and India. Despite having been enforced since 2009, competition regulation of digital markets has not picked up half the pace in comparison to the rise of digital markets. However, it is worth noting that the Competition Commission of India's ("**CCI**") understanding of issues related to digital markets through its recent *Google Orders*[3] has developed from adopting the jurisprudence developed in the EU and USA.

These global competition regulators including India have mainly dealt with questions of abuse of dominance when it comes to Big Tech. However, the primary difference between foreign regulators and CCI lies in the latter having negligible private enforcement mechanisms. Jurisdictions of EU and USA have robust mechanism in place for both

[1]Payal Malik, Sayanti Chakrabarti and Maria Khan, 'Competition Law Enforcement in Digital Markets – Emerging Issues and Evolving Responses in India in The Evolution of Antitrust in the Digital Era: Essays on Competition Policy' in the Evolution of Antitrust in the Digital Era: Essays on Competition Policy (David Evans, Allan Fels AO & Catherine Tucker eds.) (2020) 1 Competition Policy International 253.

[2]Christophe Samuel Hutchinson, 'Potential Abuses of Dominance by Big Tech through Their Use of Big Data and AI' (2022) 10 (3) Journal of Antitrust Enforcement 443-468.

[3]*Umar Javeed v Google LLC* Case No. 39 of 2018**;** *XYZ (Confidential) v Alphabet Inc. & Ors* Case No. 07/2020 (25 October 2022).

public and private enforcement systems to deter the persistent anti-competitive practices employed by Big Tech.[4]

Private enforcement is a legal action brought by a victim of anti-competitive behaviour before a court.[5] Amongst a gamete of actions, one of the ways of implementing private enforcement is by making a Compensation Application. Such applications are in the nature of a civil suit, wherein the identified antitrust breach entitles the stakeholder to avail damages.[6] European Commission, in a White Paper, conveyed that full compensation should be the primary and the most important guiding principle of private enforcement. Additionally, an effective structure for compensation would ensure that the final cost of infringement is borne by the infringers in their entirety and not by those who were the victims.[7] The duty to revitalize private enforcement lies with the Competition Regulators, especially in providing relief to direct victims.

Compensation applications in global jurisprudence include *follow-on actions* and *stand-alone actions*. These damage actions are brought forth when a victim, including a consumer and/or a competitor, has faced a monetary loss by virtue of an anti-competitive act committed by an enterprise.[8] The authors in this paper delve into the need for an established mechanism for private enforcement of Competition Laws,

[4]Christophe Samuel Hutchinson, 'Potential Abuses of Dominance by Big Tech through Their Use of Big Data and AI' (2022) 10 (3) Journal of Antitrust Enforcement 443-468.

[5]Alexandre Lacresse, 'Private Enforcement: The Court of Justice of the European Union Clarifies the scope of the national court's powers in a stand-alone action for damages regarding the production of evidence contained in the national competition authority's file (Regiojet)' (2023) (2) Concurrences N° 2-2023, Art. N° 112563 135-137 <https://www.concurrences.com/en/review/issues/no-2-2023/chroniques/private-enforcement-the-court-of-justice-of-the-european-union-clarifies-the> accessed 12 January 2024.

[6]ibid.

[7]Rupprecht Podszun, 'Private Enforcement and Gatekeeper Regulation: Strengthening the Rights of Private Parties in the Digital Markets Act' (2022) 13(4) Journal of European Competition Law and Practice 254-267.

[8]ibid.

limited within the context of compensation matters, especially in antitrust claims against Big Tech.

Follow-on actions are raised followed by a finding of an antitrust infringement by the relevant competition authority whereas, in a *stand-alone* claim, a finding of antitrust infringement is not necessary and litigants can raise a stand-alone competition violation to accrue damages from the alleged enterprises.[9] Even though it is included in the text of the legislation, i.e., Competition Act, 2002, these claims have never been implemented in contrast to the strict public enforcement of competition laws. This is evidenced by the pending compensation claim in the *MCX Stock Exchange v. National Stock Exchange of India*[10] case which is currently pending before the Supreme Court of India.

The authors, keeping in mind the rise of antitrust violations in the digital market, propose a systemic model of private enforcement and attempt to make a case for it on the basis of functional suggestions and benefits. They also analyse the interplay between public and private enforcement while asserting the proposition that effective private enforcement by way of compensation applications or damage suits would act as adequate deterrence against the Big Tech, much like public enforcement of competition concerns poses through penalties.[11]

This paper is focused towards taming Big Tech in the digital market space by way of enforcing private compensation applications. There are two factors that drive this specific focus on Big Tech, *first*, being

[9]European Commission, 'White Paper on Damages Actions for Breach of the EC Antitrust Rules' COM(2008) 165 Final <https://ec.europa.eu/competition/publications/cpn/2008_2_4.pdf> accessed 13 January 2024.

[10]*National Stock Exchange of India v Competition Commission of India* (2014) Civil Appeal 8974.

[11]Saïd Souam and Jeanne Mouton, 'Privacy and Competition Law: Is There a Room for Private Enforcement?' (2020) Concurrences N° 4-2020, Art. N° 97146 74-80 <https://www.researchgate.net/publication/344630001_Privacy_and_competition_law_Is_there_a_room_for_private_enforcement> accessed 12 January 2024.

the extant jurisprudence from the EU and USA on matters of private enforcement involving Big Tech, and *second*, being the slew of Competition concerns with the Big Techs' behaviours, a trend which is only likely to solidify in times to come.

In the initial chapter of the paper, the authors attempt to explain the fundamentals of public enforcement. Authors discuss how private enforcement deserves equivalent attention as public enforcement. Herein, the authors look at the developments of abuse of dominance cases, particularly in the EU, USA, and India, which display the continual litigations involving digital gatekeepers. In particular, the chapter contains an analysis of cases where competition authorities have inculcated a nuanced approach in adjudging matters involving Big Tech [**II**]. Further, the authors in the next chapter analyse the developing international approach of regulators of the EU and USA in matters of private antitrust compensation. The authors have specifically noted the application of the same by market participants and consumers of the digital market across these jurisdictions [**III**]. In the following chapter, the authors analyse the legal framework of private enforcement in the Indian Competition Law sphere. Here, the authors have discussed the reasons for ineffective enforcement of Section 53N of the Competition Act, 2002 ("**Act**") [**IV**]. The next chapter contains suggestions made by the authors to enforce compensation applications by amending the present act and introducing provisions in the upcoming Digital Competition Act. The authors here attempt to draw references from specific Big-Tech regulations such as the Digital Markets Act ("**DMA**"), which is enforced in the EU with an aim to bring a more feasible and practical option for accommodating changes [**V**]. Lastly, the authors conclude this paper by laying down the objectives and reasons for one to focus on the growing concerns posed by the digital markets and highlight the importance of private enforcement in competition law to help curb the same.

II. ANTITRUST ENFORCEMENT IN DIGITAL MARKETS

Digital Gatekeepers, mainly the names of GAFA, have become omnipresent on files of competition authorities all around the world. The proliferation of matters involving GAFA has given rise to enhanced jurisprudence in the competition sphere. In this section, the authors enumerate prominent cases involving these digital gatekeepers that have led competition authorities to amplify their powers to enforce the objectives of competition law in the nuanced field of the digital market. This chapter will discuss cases from the EU, USA, and India, respectively. These developments, especially in the USA, have driven antitrust authorities from enforcing compensation applications for the stakeholders, including consumers that have been at a disadvantage by virtue of an abuse by the GAFA, more on which has been detailed below:

A. EU

Prior to the advent of the DMA and the Digital Services Act ("**DSA**"), the EU emerged as one of the stronger jurisdictions, winning the battle against Digital Gatekeepers.[12] Some of the landmark cases are:

a) Google Android

The EU in 2018 held Google liable for having abused its dominant position under Article 102 of the Treaty of Functioning of the European Union ("**TFEU**").[13] One of the restrictions imposed by Google through its Mobile Application Distribution Agreement ("**MADA**") required

[12]Kyriakos Fountoukakos et al 'Digital Market Act soon to enter into force – overview of Key Provisions' (*HSF Notes*, 27 October 2022) <https://hsfnotes.com/crt/2022/10/27/digital-markets-act-soon-to-enter-into-force-overview-of-key-provisions/?utm_source=mondaq&utm_medium=syndication&utm_term=Anti-trustCompetition-Law&utm_content=articleoriginal&utm_campaign=article> accessed 12 January 2024.

[13]Consolidated Version of the Treaty on European Union (2008) OJ C115/13.

manufacturers of mobile devices, to pre-install Google Search and Chrome browser apps in order to be able to obtain a licence from Google to use the Google Play Store.[14] EC held that such an imposition was in furtherance of maintaining a dominant position in the online search market as such preinstallation could give rise to a *status quo bias* as a result of which consumers would tend to use the search and browser apps made accessible to them.[15] Such a pre-installation gave Google a competitive edge over its other competitors in the online search market.[16] This decision of EC was upheld by the General Court in its judgement dated 14 September 2022.[17] This decision also gave rise to prominent *follow-on* actions that are ongoing, for example, the compensation claim filed by Seznam in Czech. [18]

b) Google Shopping

The 2021 judgement by the General Court in *Google Search (Shopping) case* was a milestone for the EC.[19] This landmark case gave effect to enforcement of Article 102 of the TFEU in the digital space.[20] In this case, Google had designed the result page of *Google Search* in a way that favoured its own comparison-shopping service (Google Shopping), while placing rival comparison-shopping service websites

[14]*Google and Alphabet v Commission (Google Android)* Case No. T-604/18 (14 September 2022).
[15]ibid.
[16]Johannes Persch, 'Google Android: The General Court takes its position' (*Kluwers Competition Law Blog*, 20 September 2022) <https://competitionlawblog.kluwercompetitionlaw.com/2022/09/20/google-android-the-general-court-takes-its-position/> accessed 13 January 2024.
[17]Aneta Kapuciánová, 'Czech Seznam.cz Sends Over CZK 9 Billion Bill to Google as a Damage Compensation Claim' (*Sblog*, 10 December 2020) <https://blog.seznam.cz/en/2020/12/czech-seznam-cz-sends-over-czk-9-billion-bill-to-google-as-a-damage-compensation-claim/> accessed 12 January 2024.
[18]ibid.
[19]*Google and Alphabet v Commission (Google Shopping)* Case No. T-612/17 (10 November 2021).
[20]Cristina, 'Google Shopping: A Shot in the Arm For the EC's Enforcement Effort, But How much will it Matter' (*Concurrences*, 13 December 2021) <https://www.concurrences.com/en/bulletin/special-issues/big-tech-dominance/104053> accessed 13 January 2024.

at a competitive disadvantage. EC held that Google indulged in self-preferencing of its own services by giving them greater visibility on the result pages of Google and simultaneously demoting its competing comparative shopping services on its result pages to lower-ranked links and pages.[21] It was held anti-competitive by way of leveraging the dominant position of Google in online search market to enter and protect another adjacent market for comparative shopping services, manifesting an abuse under Article 102 of the TFEU.[22] *Google Shopping* case stood out to be one of the watershed moments in EC jurisprudence as, for the first time in years, the General Court expanded the interpretation of Article 102 of the TFEU to give life to a theory of harm of self-preferencing in furtherance of enforcing of competition laws in the digital space. This decision gave rise to prominent *stand-alone* actions that are ongoing, for example, the compensation claim filed by PriceRunner in Sweden. [23]

B. USA

The USA, with label of being the first country to identify and enact Competition Laws, has adopted multiple nuances in the present years at their stint of fighting the battle against Big Tech, some of the judgements being:

a) Cameron et. al. v. Apple Inc.[24]

This case was filed in California, wherein Apple was held liable for violating antitrust laws by creating a monopoly with its App Store[25] under Sections 1 and 2 of the Sherman Act.[26] The case alleged that

[21]Pablo Ibáñez Colomo, 'Google Shopping: A Major Landmark in EU Competition Law and Policy' (2022) 13(2) Journal of European Competition Law & Practice 61.
[22]Consolidated Version of the Treaty on European Union [2008] OJ C115/13.
[23]'PriceRunner Sues Google for 21 Billion Euros' (*PriceRunner*, 2 July 2022) <https://newsroom.pricerunner.com/posts/pressreleases/pricerunner-sues-google-for-21-billion-euros> accessed 12 January 2024.
[24]*Cameron et al v Apple Inc.* 4:19-cv-03074 (N.D. Cal.).
[25]*United States v Apple Inc* [2015] USCA2 14319, 791 F.3d 290 (2d Cir. 2015).
[26]Sherman Antitrust Act, 15 U.S.C. (1890) sec 1-7.

Apple monopolised (or attempted to monopolise) an alleged iOS app and in-app goods distribution services market in violation of antitrust and unfair competition laws in the United States and California.[27] The plaintiffs claimed that Apple's App Store was a monopoly, that Apple's 30% sales fee was only conceivable due to the monopoly, and that Apple's insistence on a $0.99-floor price harmed developers who sought to compete at a level playing field. Apple rejected all charges, however, agreed on a settlement with USA developers of any Apple iOS application or in-app product sold for a non-zero price and sold *via* Apple's iOS App Store between 2015 and 2021.[28]

b) State of Utah et al v. Google LLC [29]

The State of Utah, in the year 2021 alleged Google to have illegally maintained its Play Store to coerce app developers and consumers into using Google's payment processing system for in-app purchases without any alternatives. The complaint accuses Google of unfairly restricting competition, limiting consumer choice, and driving up app pricing through its dominance. The lawsuit seeks to hold Google liable for causing harm to app developers and customers attracting violations under 15 US Code Sections 1 and 2.[30] However, as a part of the lawsuit, a settlement of $700 Million were announced[31] wherein $629 Million has been allocated to a settlement fund for consumers, who were restricted from choices in processing any in-app purchase and as a consequence *overpaid* for such purchases, $70 Million will go to the other allied state parties and the remaining $1 Million would be allocated for settlement administration.[32]

[27]*Cameron et al v Apple Inc.* 4:19-cv-03074 (N.D. Cal.).
[28]ibid.
[29]*State of Utah v Google LLC* 3:21-cv-05227 (N.D. Cal.).
[30]Sherman Antitrust Act, 15 U.S.C. (1890) sec 1,2.
[31]*In re Google Play Store Antitrust Litigation* Case No. 3:21-md-02981-JD <https://www.texasattorneygeneral.gov/sites/default/files/images/press/Google%20Play%20Settlement%20Filestamped.pdf> accessed 12 January 2024.
[32]ibid.

C. India

Following suit of other competition authorities, CCI, in the year 2022, made its landmark decisions on Google's anti-competitive practices. CCI delved into nuanced concepts in the digital space and utilised them efficiently to render a decision. The regulator identified concepts such as the gatekeeper status of Google, and the interplay between multi-homing and network effects in defining relevant markets in digital space, among many others.[33] These cases being:

a) XYZ v. Alphabet & Ors.[34]

Much like *State of Utah v. Google*, an information was filed before CCI alleging that Google abused its dominant position by prohibiting app developers charging for apps and downloads from Google Play, from dealing with any payment processor other than the ones provided by Google, under its Google Play Billing System ("**GBPS**").[35] By virtue of such prohibition, it was opined by CCI that Google was removing choices from the market and later was charging excessive commissions to app developers that used the GBPS.[36] CCI held that Google, by virtue of such behaviour, has manifested violations under Sections 4(2)(a)(i), 4(2)(a)(ii), 4(2)(b)(ii), 4(2)(c) and Section 4(2)(e) of the Competition Act, 2002, for imposing unfair conditions, indulging in predatory pricing, limiting, and restricting scientific development and for leveraging of dominant position in one market to enter another. CCI, in this case, focused on opening the market at every value chain and eliminating bottlenecks to promote innovative practices. This

[33]Avaantika Kakkar, Kirthi Srinivas and Ruchi Verma 'What's Happening: 2022 Wrap of Competition Law in India' (*Cyril Amarchand Mangaldas Competition Law Blog*, 25 February 2023) <https://competition.cyrilamarchandblogs.com/2023/02/whats-happening-2022-wrap-of-competition-law-in-india/> accessed 10 March 2023.
[34]*XYZ (Confidential) v Alphabet Inc. & Ors* Case No. 07/2020 (25 October 2022).
[35]ibid.
[36]ibid.

proactive initiative of unlocking markets was also noted in the *SAIL* judgement.[37]

b) Umaar Javeed v. Google LLC & Anr.[38]

This CCI case is largely similar to the Google Android case proceedings before the EC, where Google was found guilty of abusing the power of the Google Play Store to unfairly benefit its own proprietary mobile applications and to stifle the development of competing mobile operating systems.[39] Similar to the EU case, Google, through this MADA, its Anti Fragmentation Agreements ("**AFA**") and Revenue Sharing Agreements ("**RSA**"), imposed unreasonable terms on OEMs.[40] Pre-installation of the entire GMS suite, conditional upon signing of AFA for all Android devices, prohibited OEMs from developing and selling applications that compete with Google.[41] CCI held that Google, by virtue of such behaviour, has manifested violations under Sections 4(2)(a)(i), 4(2)(c), 4(2)(d), and Section 4(2)(e) of the Competition Act, 2002, for imposing unfair conditions, denying market access and for leveraging of dominant position in one market to enter another.

Now that relevant development of matters in the digital space has been identified, in the succeeding section, the authors shall recognise governing private enforcement laws and analyse the litigation that has emanated from the matters under the jurisdictions of the EU and the US.

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[37]*Competition Commission of India v Steel Authority of India Ltd*. (2010) 10 SCC 744.
[38]*In Re: Umar Javeed and Ors v Google LCC and Ors.* Case No. 39 of 2018 (20 October 2022).
[39]ibid.
[40]ibid.
[41]Valentin Mircea, 'Private enforcement: An overview of EU and national case law' e-Competitions Private enforcement, Art. N° 105150 (*Concurrences*, 17 February 2022) <https://www.concurrences.com/en/bulletin/special-issues/private-enforcement-1850/private-enforcement-an-overview-of-eu-and-national-case-law-105150> accessed 12 January 2024.

III. THE DEVELOPING INTERNATIONAL APPROACH OF PRIVATE ENFORCEMENT IN DIGITAL MARKETS

In this chapter, the authors shall analyse the laws on filing compensation in competition matters of international jurisdictions such as the EU and USA, while analysing different circumstances wherein such compensations have been granted in antitrust matters relating to Big Tech.

A. EU

Private enforcement of EU competition law has a well-established and recognised role.[42] Onset of 2014 *Private Damages Directive* has given significant procedural autonomy to the Member States to adjudicate on matters of compensation arising out of Competition cases.[43] *Damages Directive* serves the key purpose of rendering effective remedies to persons while honouring their right to compensation.[44]

The intent of this enactment stemmed from a plethora of cases, such as *Courage Ltd v. Bernard Crehan*[45] and *Vincenzo Manfredi v. Lloyd Adriatico Assicurazioni*,[46] wherein the courts opined that practical effect of Article 101 of the TFEU would be at risk if the EU was not

[42]ibid.

[43]Assimakis P Komninos, 'The Digital Markets Act and Private Enforcement: Proposals for an Optimal System' Concurrences 425-444 <https://awards.concurrences.com/en/awards/2022/academic-articles/the-digital-markets-act-and-private-enforcement-proposals-for-an-optimal-system-3007> accessed 13 January 2024.

[44]Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, Recital 3.

[45]*Courage Ltd v Bernard Crehan* and *Bernard Crehan v Courage Ltd and Others* (2001) Case C-453/99.

[46]*Vincenzo Manfredi v Lloyd Adriatico Assicurazioni SpA, Antonio Cannito v Fondiaria Sai SpA* and *Nicolò Tricarico* and *Pasqualina Murgolo v Assitalia SpA* (2006) Case Joined C-295/04 to C-298/04.

open to any individual claims for damages for loss caused due to anti-competitive conduct.[47] Cases of *Crehan, and Manfredi* coupled with studies and reports conducted by the EC, had oscillated between deterrence and compensation as the key rationale for facilitating private enforcement of competition law.[48] This allowed the stakeholders to understand the importance of invoking private enforcement as a deterrent mechanism for actions arising from Articles 101 and 102 of the TFEU.[49]

The Directive, under its recitals, has allowed any person to claim compensation for harm suffered where there is a causal relationship between that harm and an infringement of competition law before *any national courts of the EU Member States*.[50] A *"person"* under the Directive has been broadly considered to be any natural or legal persons, including consumers, undertakings, and public authorities alike.[51] Therefore, the broad ambit of the Directive allows for anybody with a causal relationship to file a suit for damages, whether it is a *follow-on* action or a *stand-alone* action.[52] In the EU multiple claims

[47]Whish, Richard, and David Bailey, *Competition Law* (10th edn, Oxford University Press 2018).
[48]Alexandre Lacresse 'Private Enforcement: The Court of Justice of the European Union Clarifies the Law' (2023) Issue 2 Concurrences N° 2-2023, Art. N° 112563 135-137 <https://www.concurrences.com/en/review/issues/no-2-2023/chroniques/private-enforcement-the-court-of-justice-of-the-european-union-clarifies-the> accessed 12 January 2024.
[49]Consolidated Version of the Treaty on European Union [2008] OJ C115/13.
[50]Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, Recital 11.
[51]ibid.
[52]Alexandre Lacresse 'Private Enforcement: The Court of Justice of the European Union Clarifies the Law' (2023) Issue 2 Concurrences N° 2-2023, Art. N° 112563 135-137 <https://www.concurrences.com/en/review/issues/no-2-2023/chroniques/private-enforcement-the-court-of-justice-of-the-european-union-clarifies-the> accessed 12 January 2024.

of damages have been filed against the Big Techs in the form of *follow-on*, them being:

a) Follow-on suits against Google

In *Sweden*, PriceRunner, a Swedish Price Comparison firm, filed a follow-on lawsuit in Sweden, by virtue of the *Google Shopping* case with an aim to make Google pay compensation for the profit PriceRunner had lost in Britain since 2008, in Sweden and Denmark since 2013 because of Google's anti-competitive practices.[53]

In *Czech*, Seznam.cz, a Czech Republic web search platform, had filed a follow-on suit before the Czech courts demanding 9.072 billion crowns in damages from Google, in regard to the *Google Android* case. The damages were suffered while trying to distribute Seznam's applications and services via mobile devices with the Android operation system, which was limited because of Google's MADA. The claim was based on the period between 2011 and 2018.[54]

The DMA, which was instilled, has mentioned the application of the Regulation to be in consonance with the workings of the national courts under Recital 92 and Article 39. As a result, one may use the DMA to file a compensation claim in an EU national court. This comprehensive strategy aids in safeguarding a victim's entitlement to compensation.[55]

[53]'Sweden's PriceRunner sues Google for 2.1 bln euros' (*Reuters*, 7 February 2022) <https://jp.reuters.com/article/idUSL4N2UI1MY/> accessed 12 January 2024; 'Google sued for €2.1 billion in Sweden' (*DW*, 8 February 2022) <https://www.dw.com/en/swedens-pricerunner-sues-google-for-21-billion/a-60691620> accessed 12 January 2024.

[54]Prague Morning, 'Czech Platform Demands €345 Million from Google in Antitrust Damages' (*Prague Morning*, 11 December 2020) <https://www.praguemorning.cz/czech-platform-demands-e345-million-from-google-in-antitrust-damages/> accessed 13 January 2024; 'Google faces $417 million claim from Czech search engine Seznam' (*Reuters*, 10 December 2020) <https://www.reuters.com/article/us-alphabet-seznam-idUSKBN28K0UW> accessed 13 January 2024.

[55]Giulia Rurali and Martin Seegers, 'Private Enforcement of the EU Digital Markets Act: The way ahead after going live' (*Lexology*, 19 June 2023)

B. USA

While the EU has a settled law in place, the jurisdiction of the USA has been privately enforcing competition matters for longer than that of the EU. Private enforcement of competition law is an established, well-developed mode of enforcement in the US, constituting preponderance of the Department of Justice ("**DOJ**") and Federal Trade Commission ("**FTC**").[56] The success of the private enforcement system of antitrust infringement in the US stimulated the EU to adopt similar measures.[57] Deterrence plays a significant part in private enforcement under US antitrust law.[58] While the EU mandates fulfilment of a "*causal relationship*" between the loss and the anti-competitive behaviour by any direct or indirect person to claim compensation.[59] US, to the contrary, excludes indirect persons from claiming compensation. This is done to facilitate effective antitrust law enforcement and reduce the hassle of complicated damage calculation.[60] Nevertheless, claims are enormous in number, but the US is still considered one of the stricter jurisdictions when it comes down to brass-tacks of private enforcement of antitrust laws.[61]

Legal basis for private antitrust litigation in the US stems from Section 4 of the Clayton Act, 1914.[62] The section allows private parties to sue

<https://www.lexology.com/library/detail.aspx?g=615614f5-692d-419b-a5dc-b4e95f28493c> accessed 12 January 2024.

[56]Department of Justice, 'Private Antitrust Litigation: Procompetitive or Anticompetitive?' (4 October 2011) <https://www.justice.gov/atr/private-antitrust-litigation-procompetitive-or-anticompetitive> accessed 13 January 2024.

[57]Ulf Bernitz, 'Introduction to the Directive on Competition Damages Actions' in Maria Bergstrom, Marios Iacovides and Magnus Strand (eds), *Harmonising EU Competition Litigation: The New Directive and Beyond* (Hart Publishing 2015).

[58]*Cameron et al v Apple Inc.* 4:19-cv-03074 (N.D. Cal.).

[59]*Otis GmbH & Ors v Land Oberosterreich & Ors* [2012] ECJ C-199/11.

[60]Rupprecht Podszun, 'Private Enforcement and Gatekeeper Regulation: Strengthening the Rights of Private Parties in the Digital Markets Act' (2022) 13(4) Journal of European Competition Law & Practice 254–267.

[61]*Cameron et al v Apple Inc.* 4:19-cv-03074 (N.D. Cal.).

[62]Clayton Act 15 U.S.C. (1914) sec 15.

under the federal antitrust laws for monetary losses caused due to an antitrust violation in the form of *follow-on* and *stand-alone* claims.[63] The same has been enforced in digital markets in the US in the form of *stand-alone* actions, vastly by application developers in the US against Google and Apple, them being:

a) Stand-alone actions

In regard to *Apple*, by virtue of the case of *Cameron et al. v. Apple Inc.*,[64] a group of App developers filed an antitrust class action lawsuit against Apple in 2019, claiming the tech giant maintained an unlawful monopoly on distribution services. According to the plaintiff, Apple used pricing restrictions, a "*supra-competitive*" 30 per cent commission fee, and other tactics to limit what developers can upload to the App Store. Apple, in a press release, announced a compensation of a sum of USD 100 million Dollars to help small app developers while also clarifying its app policies allowing app developers to contact their customers for payment options even outside the App Store.[65] The Small Developer Assistance Fund created out of the corpus of money as part of the settlement will benefit over 99 per cent of US iOS developers whose proceeds from the app and in-app digital product sales through all associated accounts were less than $1 million per calendar year during the period from 4 June 2015 to 26 April 2021.[66] These developers could claim sums from the fund ranging between minimum of $250 to $30,000, based on their historic participation in the App Store ecosystem.[67] Presently, by virtue of the aforementioned

[63]*Cameron et al v Apple Inc.* 4:19-cv-03074 (N.D. Cal.).
[64]ibid.
[65]Charley Connor, 'App developers score $100 million from Apple' (*Global Competition Review*, 17 June 2022) <https://globalcompetitionreview.com/gcr-usa/article/app-developers-score-100-million-apple> accessed 12 January 2024.
[66]William F Shughart II, 'Here's Why the Utah-Led Antitrust Lawsuit Against Google Play Games the System' (*Independent Institute*, 27 July 2021) <https://www.independent.org/news/article.asp?id=13686> accessed 12 January 2024.
[67]ibid.

case holding Apple liable for the aforementioned practices under the Sherman Act, there exists a proper mechanism in place to facilitate awarding of compensation to app developers.[68]

In regard to Google, by virtue of *State of Utah v. Google*,[69] US App developers and consumers had filed a class action lawsuit against the search engine giant Google, claiming that the platform created a closed app ecosystem *via* its Play Store that left them at a disadvantage. Google allegedly had made agreements with phone manufacturers and employed other tactics to exclusively channel all consumer payments through Google Play, while levying a 30% fee on all Google Play transactions.[70] Developers had also contended that the company was responsible for intentionally hindering ways developers could provide their consumers with any special offers and payment options outside the Play Store.[71] Google announced the settlement and other measures to improve the Play Store environment in a blog post, where the company pledged its support to create open platforms and intends the settlement for eligible US app developers, those who "*earned two million dollars or less in annual revenue through the Google Play Store during each year from 2016-2021*."[72] The settlement of $700 Million as announced in December,[73] merely awaits its final approval by the Court before Google moves forward with the fund. In addition to the multi-million-dollar settlement that is yet to go into effect, Google has

[68]*Cameron et al v Apple Inc.* 4:19-cv-03074 (N.D. Cal.) <https://smallappdeveloperassistance.com/frequently-asked-questions.php> accessed 12 January 2024.
[69]*State of Utah v Google LLC* 3:21-cv-05227 (N.D. Cal.).
[70]Anna Langlois and Ben Remaly, 'Google settles developers' claims for $90 million' (*Global Competition Review*, 5 July 2022) <https://globalcompetitionreview.com/gcr-usa/article/google-settles-developers-claims-90-million> accessed 12 January 2024.
[71]American Economic Liberties Project, 'Utah v. Google' <https://www.economicliberties.us/utah-v-google/> accessed 12 January 2024.
[72]*In re Google Play Store Antitrust Litigation* Case No. 3:21-md-02981-JD <https://www.texasattorneygeneral.gov/sites/default/files/images/press/Google%20Play%20Settlement%20Filestamped.pdf> accessed 12 January 2024.
[73]ibid.

also pledged to make the Play Store environment more open and flexible for consumers and app developers alike.[74]

This chapter has highlighted all the instances where victims of anti-competitive practices have exercised their right to compensation against GAFA. However, India has not seen any such suit despite having the same victims as the EU and the US. For example, in the *XYZ v. Google* case,[75] consumers had to incur increased costs to access App services from the Google Play Store because app developers increased costs of services by virtue of high commission charges under GBPS and app developers who did not charge their consumers, incurred losses due to the high commission charges Google under GBPS. Both of these are victims of the anti-competitive practices of Google, but unlike the EU and the US, India has not witnessed any private actions raised by the Consumers of App Developers.

IV. INDIA'S JOURNEY WITH PRIVATE ENFORCEMENT

The Competition Act, 2002 was passed, among other things, to prevent anti-competitive behaviour from having an AAEC in the Indian market and to promote a system of fair competition.[76] Although the Statement of Objects and Reasons of the Act makes no mention of consumer welfare, the preface of the Act unmistakably captures its spirit by stating that its goals are to protect consumers' interests; foster and sustain market competition, and ensure the freedom of trade practised by other market participants.

In its quest to further the same motive, CCI has ensured to broaden its horizons in niche and complex markets, including the ones of Big Tech. The Act accommodates provisions for both public and private

[74]William F Shughart II, 'Here's Why the Utah-Led Antitrust Lawsuit Against Google Play Games the System' (*Independent Institute*, 27 July 2021) <https://www.independent.org/news/article.asp?id=13686> accessed 12 January 2024.
[75]*XYZ (Confidential) v Alphabet Inc. & Ors* Case No. 07/2020 (25 October 2022).
[76]The Competition Act, 2002 (12 of 2003).

enforcement. However, the present jurisprudence as identified in *XYZ v. Google* and *Umaar Javeed v. Google* has observed a better implementation of public enforcement, by penalising Google a sum of Rs. 937 Crore[77] and Rs. 1338 Crore[78] respectively, in comparison to private enforcement, despite having a mechanism to enforce compensation applications, i.e., private enforcement against the Big Tech. In this chapter, the authors analyse the existing provisions with the judgement trajectory under the Act and identify the reasons for ineffective private enforcement.

A. Laws under the Competition Act

Private enforcement is not a novel topic to the Act and is covered under Section 53N of the Act. Section 53N allows any person to file a compensation application before the National Company Law Appellate Tribunal ("**NCLAT**") by virtue of an enterprise contravening any provision under Chapter II and/or if an enterprise contravenes any order by CCI or NCLAT.

The Act merely identifies *follow-on* actions in two ways: *First,* that allows *any person* to file an application for compensation to the NCLAT upon CCI's and/or NCLAT's finding on an enterprise contravening provisions under Chapter II.[79] This section allows for *follow-on* actions notwithstanding any contravention of an order. Therefore, it is a legislative footing for consumers and competitors to file suit for compensation for losses suffered as a consequence of anti-competitive behaviour. *Second,* that allows *any person* to file an application for compensation to the NCLAT who suffered a loss by virtue of an enterprise contravening any order passed by the

[77]'CCI Set to Recover Rs. 13 Million Penalty from Google' (*BRICS Competition Centre*, 28 December 2022) <https://bricscompetition.org/news/cci-set-to-recover-rs13-million-penalty-from-google> accessed 12 January 2024.
[78]ibid.
[79]The Competition Act, 2002 (12 of 2003) s 53N

Commission or the Appellate Tribunal.[80] These follow-on compensations require the plaintiff to prove monetary loss; as a result, an enterprise unreasonably contravening any order by CCI or the NCLAT. These provisions can be invoked only when there is a contravention of an order, including unreasonable delay in the performance of remedies. Thus, under the framework, persons suffering losses do have methods to file for compensation applications. However, the record of judgments in India reflects otherwise.

B. Judgement trajectory

Despite having wide-ranging powers to clamp down on digital players through private enforcement, there has not yet been a judgement in this regard. The authors discuss two main cases in this regard, the *MCX* and the *Food Corporation of India* case. In the *MCX Stock Exchange* case,[81] the National Stock Exchange ("**NSE**") was convicted for abusing its dominant position in the currency derivatives market and continues to be the only case to make use of the Act's private enforcement provisions. A compensation of Rs. 856 crores was claimed by MCX for having faced losses by the predatory pricing of NSE in the currency derivatives market. In an application against the NSE, MCX-SX claimed that the latter had abused its market dominance by using predatory pricing to drive MCX-SX out of the currency derivative ("**CD**") market. The CCI noted that NSE dominated the CD market and, as a result, ordered NSE to amend its zero-price policy in the relevant market and to immediately desist from unfair pricing, exclusionary conduct, and leveraging its dominant position in other markets unjustly to safeguard its CD market.[82] However, the case is still sub-judice before the Supreme Court.

[80]The Competition Act, 2002 (12 of 2003) ss 42-A and 53Q
[81]*National Stock Exchange of India v Competition Commission of India* (2014) Civil Appeal 8974.
[82]ibid.

Subsequently, in *Food Corporation of India v. Excel Crop Care & Ors*. case,[83] the application of Section 53N was dealt with. In this case, the Food Corporation of India ("**FCI**") demanded a compensation of Rs. 26 crores under Section 53N. Excel Crop Care, along with UPL Limited & Sandhya Organic Ltd., was held guilty of causing an AAEC in the market. The Respondents, Excel Crop Care Limited, UPL Limited & Ors. argued that drafting of Section 53N is flawed, which, upon textual interpretation, entails that compensation claims may not be filed after the determination of an appeal by the Supreme Court. The Respondents further argued that since the Excel Crop Care case, CCI and NCLAT (erstwhile, COMPAT) decisions had merged with the judgment of the Supreme Court in 2017, the limitation period to file the application had elapsed.[84] This was dismissed by NCLAT since the cause of action was held to have arisen from CCI and/or COMPAT decision, as opposed to that of the Supreme Court, both of which found violations under provisions of the Act.[85] This decision of maintainability under Section 53N was challenged by UPL Limited before the Supreme Court. Through an order in September 2022, the Supreme Court disposed of the appeal by leaving questions of maintainability open to NCLAT's discretion. However, the case has witnessed no revelations thereafter and remains pending.

Owing to the matters being sub-judice, there is no precedence on the application of Section 53N; therefore, the proportion of compensation applications in comparison to the enforcement judgements is significantly less.

[83]*Food Corporation of India v Excel Crop Care Ltd. & Ors* Compensation Application (AT) No.01 of 2019 in Competition Appeal (AT) No.79-81 of 2012 (3 June 2020).
[84]Alexandre Lacresse 'Private Enforcement: The Court of Justice of the European Union Clarifies the Law' (2023) Issue 2 Concurrences N° 2-2023, Art. N° 112563 135-137 <https://www.concurrences.com/en/review/issues/no-2-2023/chroniques/private-enforcement-the-court-of-justice-of-the-european-union-clarifies-the> accessed 12 January 2024.
[85]ibid.

C. Inability to enforce

The inability to efficiently enforce provisions of private enforcement in comparison to public enforcement is because of a plethora of reasons that can be subjected under the broader headings of legal uncertainty and restrictions on forums.

a) Lack of guidance on the law causing legal uncertainty

Section 53N, on its bare textual reading, reeks of multiple unanswered queries, such as contemplation of the limitation period for filing, the stage at which it can be filed, quantification of damages, etc. The sole reason why Indian Jurisprudence has not witnessed any judgement in the area of awarding compensation is because of the legal uncertainty from the texts of the provision. Additionally, with no precedents to rely on, we are almost stuck in a hamster's wheel.

b) Shortage of avenues

The Appellate Tribunal, i.e., NCLAT, is the only authority that has been vested with powers of adjudicating on a matter of compensation. All applications made under 53N can be made only before NCLAT. Considerations of overburdening NCLAT have not been contemplated at the time of transferring the appellate functions of COMPAT to NCLAT scrapping.

Judgements passed by CCI are *in-rem*, and affect the public at large. However, in order to ensure that the deterrent character of competition law is firmly maintained, *in-personam* disputes or private enforcement by way of compensation applications must be revisited on priority. This would complement the advancing public enforcement, especially in the emerging fields of Big Tech, wherein public enforcement coupled with private enforcement is required to prevent Tech giants from contravening Competition Laws.

V. THE WAY FORWARD

Considering the legal background and fallacies of private enforcement, the authors suggest ways to curb loopholes of private enforcement in the Big Tech market, with particular emphasis on the upcoming Digital Competition Act in India, with specific focus the latest law report.[86]

GAFA in the Big Tech market has a strong economic character that allows for persisting market dominance. This market dominance creates a slew of harms, which makes it difficult for regulators to curb their activities through the general law. Hence, specific laws such as the DMA of the EU are imperative to regulate Big Tech.[87] The laws of DMA are formulated to eliminate the natural economic characteristic of Big Tech as a whole have envisaged a compliance structure that covers the bounds of consumer protection, privacy laws, data protection, telecommunication law, and competition laws.[88]

In data-driven markets, private enforcement and public enforcement of competition law are deeply intertwined. In a seminal article,[89] academicians have noted that repetitive competition law litigations in *digital markets* led them to consider that the deterrent effect of public enforcement is insufficient. Therefore, it seemed paramount for them to promote private enforcement in the digital markets space. the economic character of the digital market that Big Tech operates in

[86]Ministry of Corporate Affiars, 'Report of the Committee on Digital Competition Law' (2024) <https://www.mca.gov.in/bin/dms/getdocument?mds=gzGtvSkE3zIVhAuBe2pbow%253D%253D&type=ope> accessed 21 March 2024.
[87]Rahul Mishra, 'India's Digital Competition Act' (*Mondaq*, 20 January 2023) <https://www.mondaq.com/india/antitrust-eu-competition-/1271904/indias-digital-competition-act> accessed 21 January 2024.
[88]ibid.
[89]Alexandre Lacresse 'Private Enforcement: The Court of Justice of the European Union Clarifies the Law' (2023) Issue 2 Concurrences N° 2-2023, Art. N° 112563 135-137 <https://www.concurrences.com/en/review/issues/no-2-2023/chroniques/private-enforcement-the-court-of-justice-of-the-european-union-clarifies-the> accessed 12 January 2024.

demands a novel approach to tackle problems the market throws at regulators, furthering which promoting private actions in data-driven markets or digital markets was opined to have a positive effect both on consumer welfare and on deterrence which was in consonance with the goals of public enforcement through penalties.[90]

Placing reliance on the rationale, multiple jurisdictions are mulling over a law special law to regulate Big Tech. In India, the *Digital Competition Act* aims to address all the complex issues surrounding digital markets, including self-preferencing, network effects, and anti-steering clauses, among many other things.[91] The Report under Clause 35 of Chapter VII, read in consonance with its general features, promises for compensation in case the *Systemically Significant Digital Enterprise*, i.e., Big Tech breach their obligations laid down under the Bill.[92] However, the Report has not delved into compensation in deep. The authors specifically argue for introducing guidelines for private enforcement mechanisms under the umbrella of the upcoming Digital Competition Act. The authors' suggestions are two-fold:

A. Enhanced guidance on the law

The authors hereunder suggest two things; *firstly*, Section 53N requires more guidance on its application, much like the EU Damages Directive. The directive entails substantive and procedural aspects of applying for compensation claims before national courts and contains guides on methods to quantify such damages. The existence of such a directive

[90]ibid.

[91]Avimukt Dar et al, 'Digital Competition Bill Consultations: India Prepares to Regulate "Gatekeeper" Platforms' (*Mondaq*, 10 March 2023) <https://www.mondaq.com/india/antitrust-eu-competition-/1292056/digital-competition-bill-consultations-india-prepares-to-regulate-gatekeeper-platforms-> accessed 12 January 2024.

[92]Ministry of Corporate Affiars, 'Report of the Committee on Digital Competition Law' (2024) Ch IV Clause 3.52 and Ch VII Clause 35 <https://www.mca.gov.in/bin/dms/getdocument?mds=gzGtvSkE3zIVhAuBe2pbow%253D%253D&type=ope> accessed 21 March 2024.

provides any person suffering losses as a consequence of an act violating Articles 101 and 102 of the TFEU a detailed mechanism to further their applications before national courts. This includes disclosure of evidence, limitation period, joint and several liabilities, and quantification of harm, amongst many others. Such detailed guidance would reduce legal uncertainty, which the regulators are presently grappling with.

Secondly, as an addition, the authors suggest that with a specific focus on digital markets, the Digital Competition Act should include *provisions* to allow consumers and competitors to file compensation applications by virtue of violating provisions of the Act, details on limitations, quantification of damages, etc. Alternatively, the provision of the new Act can adopt a DMA-like approach, wherein provisions of DMA can be invoked at the national courts.

Illustration: App Developer X, from India, has suffered from the 30% commission fee charged for utilizing GBPS, and has incurred losses in the form of losing customers, removing important costs, etc. By virtue of the decision in the *XYZ v. Google* case, this app developer will now have multiple options to recoup the damages by filing an application by:

I. Under Section 53N, by virtue of accommodative guidance; or

II. Under provisions of the Digital Competition Act

thereby allowing X to make an efficient case against Google for contravening provisions of the Competition Act; this is much like the EU and US suits filed by app developers.

Should the law be amended to enforce and regulate compensation concerns, in ways of allowing *follow-on* claims and *stand-alone* actions, then much like the US in the *stand-alone* action against Google under the *State of Utah v. Google* case, consumers and app developers from India under *XYZ v. Google* case would be able to recoup their losses for the anti-competitive acts committed by Google under the

garb of its Billing System. This not only increases the monetary burden over and above the severe penalty that has been levied, but it also acts as an efficient deterrent for similar acts to be committed in the near future.

B. Expansion of avenues

The authors, in this regard, suggest that the provision of Section 53N should include an increased number of forums wherein a compensation application could be filed, making NCLAT the sole judicial authority to entertain compensation applications. Restricting the forum to NCLAT may give rise to judicial overburdening, considering competition cases are not the only kind of matters being heard at NCLAT. Additionally, owing to the nature of compensation applications, a deep economic assessment of quantifying damages is needed. Therefore, it is suggested by the authors that, *firstly*, forums must not be restricted to NCLAT, or there must be induction of more technical members at NCLAT, which warrants an amendment to Section 411(3) of the Companies Act, 2013.[93] *Secondly*, alternatively, CCI can institute a division or a panel that deals with compensation suits filed under Section 53N. *Thirdly*, CCI, by way of amending the Act or by way of orders by CCI or NCLAT, allows for alternate dispute resolution mechanisms like arbitration to specifically deal with questions of granting compensation to the victims. *Insofar* as arbitration is concerned, it is one of the efficient means to settle private enforcement matters in the EU.[94] Therefore, a similar approach can be implemented by the CCI wherein Arbitral Tribunals are restricted from overstepping their jurisdiction into that of the regulators; therefore, in the questions of competition, will only hear matters of compensation for follow-on actions by virtue of CCI or NCLAT decisions.

[93]The Companies Act, 2013 (18 of 2013) s 411(3).

[94]Lucian Ilie and Amy Seow, 'International Arbitration and EU Competition Law Complement Rather than Contradict One Another' (2017) 34 (6) Journal of International Arbitration 1007-1038.

Scrutinizing the want of increased private compensation matters in digital markets, the authors suggest that the proposed *Digital Markets Unit*[95] in the new Digital Competition Act must have a division or a panel of a few members, dealing specifically with matters of compensation raised against the Big Tech, would help in an expedited and efficient hearing on the matters of private enforcement.

VI. CONCLUSION

Antitrust legislation must continuously evolve and keep up with digital platforms that are constantly reinventing. Notwithstanding the variety of strategies suggested by competition regulators for dealing with digital gatekeepers and markets, regulators all concur that such platforms and marketplaces require a futuristic regulatory framework. Therefore, the conventional competition policy has often failed to capture the unique characteristics of digital markets. Competition authorities from across multiple jurisdictions, while making a law to further the collective motive of consumer welfare and encouraging competitive markets, must categorically note the nuances in aiding the motive. One such futuristic inclusion and nuanced regulation in digital markets would include diversifying private enforcement by way of compensation applications. Goals of consumer welfare as well as goals of competitive markets, will both be advanced by broadening the meaning of the legislation and establishing particular forums to decide on compensation claims. This is due to the fact that they dissuade Big Tech and other market participants who might otherwise have a tendency to break the rules of competition law. Although punitive damages are frequently connected with deterrence, even compensatory justice is likely to prevent future violations and encourage greater adherence to competition law requirements.

[95]Ministry of Corporate Affiars, 'Report of the Committee on Digital Competition Law' (2024) Ch IV Clause 3.52 and Ch VII Clause 35 <https://www.mca.gov.in/bin/dms/getdocument?mds=gzGtvSkE3zIVhAuBe2pbow%253D%253D&type=ope> accessed 21 March 2024.

While we are cognizant of the fact that private enforcement gives more teeth to competition law, the problem of inefficient implementation is not only because of the underutilisation of laws, but also because of the deficit of detailed guidance, with courts yet to pronounce a decision in this area. In conclusion, it is long overdue for regulators from established jurisdictions such as India to recognise that private enforcement of competition law is just as formidable as public enforcement at deterring anti-competitive behaviour, and that implementation is even more necessary in light of expanding markets like digital market and the Big Tech.