

Examining the Inclusion of ‘Cloud Services’ under Draft Digital Competition Bill

Background

The Indian government established a “Committee on Digital Competition Law” (CDCL) in February 2023 based on the 53rd report of the Parliamentary Standing Committee on Finance (2022-23) titled “Anti-competitive Practices by Big Tech Companies”. The CDCL submitted a draft Digital Competition Bill (DCB) in February 2024. This proposed *ex-ante* law is proposed to be enforced by the Competition Commission of India (CCI).

As per the draft DCB, in general, ‘Systemically Significant Digital Enterprises’ (SSDEs) (designated based on the given criteria) providing the identified ‘Core Digital Services’ (CDS) would have to comply with certain extra obligations from competition point of view. One of such identified CDS is “cloud services”. No rationale for such inclusion has been given the CDCL report, though. Also, there has been no concrete evidence in form of market studies or case laws by CCI that can support such inclusion.

Project Objectives

- Analyse globally reported competition issues in the cloud services sector in the Indian context and laws;
- Understand whether the cloud services market exhibits the characteristics of pure gatekeepers, including multi-sidedness, network effects, winner-takes-all, and tipping of the market;
- Examine whether ‘cloud services’ fit into the design and scheme of the proposed DCB; and
- Assess the perceived impact of including cloud services within the purview of DCB on Indian business users, particularly start-ups, end users/consumers and investment climate, as well as on the growth of the digital economy.

The overall **aim** is to influence the polity with evidence so as to make informed decision on the inclusion of ‘cloud services’ within the purview of the proposed *ex-ante* digital competition law.

Approach & Methodology

The study will involve **secondary and primary research**. An extensive literature review will be conducted, examining existing market studies, competition case laws, academic papers, and other relevant literature on cloud services and digital competition. This background research will provide critical context and help identify key research questions and areas of focus.

The primary data will be mainly collected through one-on-one interviews with cloud users – both business users and end consumers – using a semi-structured questionnaire. For better understanding of the potential respondents, hypothetical scenarios may have to be constructed around specific obligations mentioned in the DCB, such as self-preferencing, data usage, tying and bundling etc. The respondents will be sampled through a stratified random sampling method.

Consultations with other stakeholders, including cloud service providers, legal and academic experts, domain specialists, government officials, and potential investors etc. will also be conducted, based on specific semi-structured questions meant for each.

The research will pay special attention to understanding market characteristics like multi-sidedness, network effects, potential market tipping, and “winner-takes-all” dynamics, among others. It will also look into competition issues, such as restrictions on multi-cloud, interoperability, licensing restrictions, vendor lock-in, egress fee, deep

discounting, entry and exit barriers etc. Further, the impact of the proposed *ex-ante* regulation of cloud services on business users (particularly the start-up community) and end users/consumers will be gauged based on the gathered primary data through interviews.

Outputs

- Three Policy Briefs:
 - a. An Analysis of reported competition concerns in the cloud services market in Indian context using the Competition Act, 2002
 - b. Should cloud services be included in an *ex-ante* digital competition law?
 - c. Potential impact of incorporating cloud services in the proposed DCB
- One Slide Deck synthesising the above-mentioned three policy briefs, including summary of key data and conclusions.
- Two Workshops in Bangalore and New Delhi, respectively

Outcome

- More awareness among polity, leading to informed and evidence-based policy making.
- Review of the proposed draft DCB *vis-à-vis* inclusion of 'cloud services' in the same.
- Better awareness among regulators, competition practitioners and experts, businesses, consumers and service providers about competition issues in cloud services market.
- Optimal regulation, leading to fair market and innovation.

