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Digital tug of law: Mind the overlap of jurisdictions

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The Digital Competition Bill's journey reflects the challenges of regulating a fast-moving sector driven by innovation without stifling its growth.

SUMMARY
Some provisions of India's draft Digital Competition Bill cover the same ground as the personal data protection framework. This can create confusion among users and businesses. The ministries of IT and corporate affairs, together with the CCI, should coordinate efforts to resolve this.

As rain clouds gathered over New Delhi, so did the buzz inside Parliament. On day one of the Monsoon session that ended on Thursday, Members of Parliament Shashi Tharoor and Harish Chandra Meena had raised a question in writing that many others in policy circles were asking: what is happening with the draft Digital Competition Bill of 2024?

Their query tapped into deeper concerns over the bill's *ex-ante* provisions and their potential impact on startups and small enterprises.

Minister of state Harsh Malhotra, in a written response, shed light on the current status of the draft Digital Competition Bill, clarifying that the government was awaiting comments from the ministry of electronics and information technology (MeitY). He also noted that evidence from market studies was required for all relevant aspects of ex-ante regulation to be considered, given that this approach was still nascent across the world. Ex-ante rules are those made in anticipation of risks.

From stakeholder pushback and inter-ministerial disagreements to parliamentary scrutiny (spanning over two years), the bill's journey reflects the challenges of regulating a fast-moving sector driven by innovation without stifling its growth.

Regulatory overlaps in the consent framework: The bill, introduced alongside the Digital Competition LawCommittee report in March 2024, proposes an *ex-ante* framework to curb anti-competitive practices by large digital platforms. It is inspired by similar frameworks globally, like the EU's Digital Markets Act. The Indian proposal—in its draft form—would empower the Competition Commission of India (CCI) to designate entities based on quantitative and qualitative thresholds and impose obligations on them to ensure fair competition and transparency.

One of the obligations mandated by the draft bill is that designated entities must obtain explicit consent from users before (i) intermixing or cross-using personal data or (ii) allowing third-party access. 'Consent' must be obtained the way it is defined under the Digital Personal Data Protection Act of 2023 (DPDP Act), which means it must be free, informed, specific and unambiguous. This part overlaps with the DPDP Act's requirement of (i) informed written consent for specific purposes before collecting sensitive personal data and (ii) withdrawal of consent at any time.

The draft Digital Competition Bill's provisions, while well-intentioned, risk duplicating existing obligations, creating conflicting interpretations and confusing users and businesses.

In August, the Standing Committee on Finance had presented its report to Parliament emphasizing that the bill must align with the consent architecture of the DPDP Act.

Digital Competition Law Committee's clarification on overlaps: In its report, the Committee acknowledged the potential overlap between the draft Digital Competition Bill and existing laws, particularly the DPDP Act and the Competition Act of 2002.

However, it stated that the objectives of these statutes are distinct: "Although data protection under the DPDP Act and competition enforcement in digital markets under the Competition Act may have an ostensible overlap, the objectives sought to be achieved by both statutes are entirely different... It is imperative to consider the complementary nature of these legislations and that the provisions of the DPDP Act are not in conflict with the goal of promotion of competition."

While this clarification is conceptually sound, the practical implementation of overlapping provisions raises concerns, especially those related to user consent and data governance.

Overlapping consent protocols would pose several challenges for users and businesses. Companies may face regulatory duplication, having to comply with multiple consent frameworks. This would increase compliance costs and administrative burdens and could lead to conflicting enforcement, resulting in parallel inquiries and legal uncertainty.

For users, inconsistent consent requests across platforms can cause confusion and erode trust in digital services. The complexity of navigating these overlapping regimes may also deter startups and smaller players from entering or scaling in the digital market,

which could go against innovation.

We need inter-sectoral coordination: Given the potential for regulatory conflict, it is imperative that the ministry of corporate affairs, which is spearheading the draft Digital Competition Bill, and MeitY, which oversees data governance, collaborate closely—along with the CCI—to harmonize the bill's provisions with existing laws.

The Parliamentary panel's report's call for proactive coordination is a timely signal. Perhaps a shared regulatory sandbox could allow enterprises to test compliance strategies under both regimes. This could reduce uncertainty.

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