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Comments on Draft Digital Competition Bill, 2024

S. No.	Reference to Chapter/Section/Para no./Clause	Issue	Suggestion	Rationale
1.	**Overall Draft Bill**	Ex-ante regulations applicable on **home-grown businesses/ enterprises/ start-ups**[1] is premature, given that our domestic digital businesses/ enterprises/ start-ups are not yet competitive at a global level. Covering **home-grown businesses/ enterprises/ start-ups** under the ambit of this draft Bill will lead to inadvertent negative impact including: ● Undoing Government efforts to promote and develop **home-grown businesses/ enterprises/ start-ups**: The Government of India, through several programs and schemes such as Startup India, Make in India and	We overarchingly and humbly submit that while ex-ante regulations may be implemented for Systematically Significant Digital Enterprises ("SSDEs"), the threshold of SSDEs needs to be relooked to exclude **home-grown businesses/ enterprises/ start-ups.**	To avoid inadvertent negative impact on **home-grown businesses/ enterprises/ start-ups**' growth, and India's competitiveness at the global level.

[1] The term *"home-grown businesses/ enterprises/ start-ups"* here refers to businesses/ enterprises/ start-ups with most of the following features–
a. The Founder of the businesses/ enterprises/ start-ups is an Indian Citizen or an Overseas Citizen of India.
b. The primary operational company of the business/ enterprise/ start-up is registered in India.
c. The Chairman and the MD of the primary operational company of the businesses/ enterprises/ start-ups or the majority of the Board of Directors thereof are Indian Citizens or are Overseas Citizens of India.
d. Revenues of the business/ enterprise/ start-up are predominantly India-focused.
e. The primary place of business of the business/ enterprise/ start-up is in India.

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		Digital India, has played a paramount role in developing and growing Indian businesses, enterprises, and start-ups. Bringing the same developing Indian businesses, enterprises, and start-ups under an ex-ante framework will result in undoing the efforts by putting a circumscription on further growth. ● Impacting the global standing of **home-grown businesses / enterprises/ start-ups**: The thresholds under EU's DMA are such that they only cover global big tech companies. It is worth noting that no EU-born company is designated as a gatekeeper under the DMA[2]. In contrast, the threshold proposed in the draft Bill results in the coverage of many		

[2] https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4328

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		Indian **home-grown businesses/ enterprises/ start-ups** that are not yet competitive at a global scale. This will severely impact not only their scope of growth and innovation, but also their global standing in their respective industries. For instance, in the food ordering and delivery domain, domestic companies are not yet comparable to their global counterparts. Publicly available data shows that Zomato, an Indian listed company, has a GMV teetering ~8% that of its USA counterpart Doordash. Its revenue is merely ~3.5% that of its Chinese counterpart Meituan. Despite this, the current threshold proposed under the Indian draft Bill has the potential to bring into its ambit such Indian food		

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		ordering and delivery companies.		
2.	**Overall Draft Bill**	Any Bill of such nature should be drawn with consensus of the domestic industry. Effects of such a bill have to be carefully considered as they have the potential to hamper innovation and growth of digital enterprises, making the market less contestable - particularly for the **home-grown businesses/ enterprises/ start-ups**.	At the outset, we humbly request that **home-grown businesses/ enterprises/ start-ups** should be kept outside the purview of the draft Bill. Further, it is recommended that: ● Any progression on the draft be undertaken post extensive engagement with industry participants to gauge impact, and avoid any inadvertent negative consequence, including those on customers. ● Implementation be in a phased manner with due consideration for regulatory overlaps.	To avoid any inadvertent, negative impact on innovation and growth, and the risk of burdening entities with onerous compliances and harm to customers interest.

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			• Subordinate legislation/ rules be pursuant to thorough stakeholder consultation.	
3.	**Chapter II, Section 3(2)(b)** on the thresholds of Systematically Significant Digital Enterprise ("**SSDE**") *An enterprise shall be deemed to be a Systematically Significant Digital Enterprise in respect to a Core Digital Service, if:* *(a) ...* *AND* *(b) It meets any of the following user thresholds in in each of the immediately preceding three financial years in India:* *(i) The core digital service provided by the enterprise has at least one crore end users; OR* *(ii) The core digital service provided by the enterprise has at least ten thousand business users.*	The prescribed thresholds seem to not account for the scale of India. • More than 50% of the population in India uses the internet as per an IAMAI and Kantar report[3]. In absolute terms, nearly 75.9 Cr Indians are using the internet, thereby becoming end users of many digital platforms. Therefore, a threshold of 1 Cr end users is disproportionately low given our domestic scale. It is also worth noting that the EU's Digital Market Act has a similar test with the user threshold being as high as 4.5 Cr despite having	At the outset, we humbly request that **home-grown businesses/ enterprises/ start-ups** should be kept outside the purview of the draft Bill. Furthermore, it is humbly submitted that the spread test threshold appears to be mistakenly/ erroneously finalized. It is recommended that a more statistically sound method be followed to identify the thresholds, and to ensure that the threshold is such that it **excludes home-grown businesses/ enterprises/ start-ups**. The method should account for the scale of India, and showcase	To avoid harming the **nascent Indian startups, nascent Indian unicorns and home-grown businesses/ enterprises/ start-ups,** that are yet to be competitive at a global level. To avoid harming **home-grown businesses/ enterprises/ start-ups** that meet the current quantitative thresholds in the draft Bill despite causing no adverse impact on the competition landscape. The limited resources of the Commission should be dedicated to the regulation of those enterprises that may significantly harm the

[3] https://www.thehindu.com/news/national/over-50-indians-are-active-internet-users-now-base-to-reach-900-million-by-2025-report/article66809522.ece

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		a total population of merely ~45 Cr. ● There are more than 16 lakh active companies in India[4]. Further, entities that may be business users, but are not incorporated companies will be much higher. As such, a threshold of 10,000 is not proportionally representative of the scale. As a result, multiple small B2B platforms may inadvertently fall under the ambit of SSDE. Again, it is worth noting that the EU's Digital Markets Act specifies the threshold at 10,000 despite having a very different economy. ● With such a low threshold for being categorized as an SSDE, the Commission will also be heavily burdened to monitor and regulate	substantial coverage of the universe as proof of substantial spread.	competitive landscape in the country.

[4] https://www.livemint.com/news/india/number-of-active-companies-crosses-1-6-million-led-by-service-sector-mca-11701698583369.html

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		a significantly large number of enterprises.		
4.	**Chapter II, Section 3(3)** on Qualitative Threshold for Systemically Significant Digital Enterprises *(3) The Commission may designate an enterprise as a Systemically Significant Digital Enterprise in respect of a Core Digital Service, even if it does not meet the criteria set out under sub-section (2), if the Commission is of the opinion that such enterprise has significant presence in respect of such a Core Digital Service, based on an assessment of information available with it, and based on any or all of the following factors:* *(i) volume of commerce of the enterprise;* *(ii) size and resources of the enterprise;* *(iii) number of business users or end users of the enterprise;* *(iv) economic power of the enterprise;* *(v) integration or inter-linkages of the enterprise with regard to the multiple sides of market;* *(vi) dependence of end users or business users on the enterprise;* *(vii) monopoly position whether acquired as a result of any statute or by*	The draft Bill has certain wide-ranging and broad factors that the Commission may use to designate an enterprise as an SSDE. Further, giving the power to the Commission to prescribe more factors for designating enterprises as SSDEs may amount to excessive delegation and reduce certainty of the regulatory landscape that an enterprise functions in. Under the draft Bill, if an enterprise does not meet the thresholds prescribed for qualifying as an SSDE, the Commission may designate such an enterprise as an SSDE based on certain factors. These include volume of commerce, size and resources and number of business or end users. Some of these factors are subjective and overbroad and may give the Commission wide-ranging powers to	At the outset, we suggest removing this provision in its entirety since categorization as an SSDE should be on an objective and quantifiable threshold provided in the statute itself. Furthermore, this provision should not apply to **home-grown businesses/ enterprises/ start-ups.** The draft Bill also gives the Commission the power to use any other factors that it may consider relevant for designating enterprises as an SSDE. **This may amount to excessive delegation. The Supreme Court has held that in the absence of standards, criteria, or principles on the contents of subordinate legislation, the powers given to the executive may go beyond**	To avoid ambiguity and subjectivity in the thresholds for SSDE.

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	virtue of being a Government company or a public sector undertaking or otherwise; *(viii) barriers to entry or expansion including regulatory barriers, financial risk, high cost of entry, marketing costs, technical entry barriers, barriers related to data leveraging, economies of scale and scope, high cost of substitutable goods or services for end users or business users;* *(ix) extent of business user or end user lock in, including switching costs and behavioural bias impacting their ability to switch or multi-home;* *(x) network effects and data-driven advantages;* *(xi) scale and scope of the activities of the enterprise;* *(xii) countervailing buying power;* *(xiii) structural business or service characteristics;* *(xiv) social obligations and social costs;* *(xv) market structure and size of the market; and* *(xvi) any other factor which the Commission may consider relevant for the assessment.*	designate enterprises as SSDE. These factors are: - extent of business user or end user lock in, including switching costs and behavioural bias impacting their ability to switch or multi-home; - network effects and data-driven advantages; - scale and scope of the activities of the enterprise; The draft Bill should only prescribe factors that can be objectively assessed. Designation of an enterprise as an SSDE should only be done through an objective assessment.	**the permissible limits of valid delegation**.[5] The factors to designate enterprises as SSDEs should be prescribed in the statute itself and not be delegated. Alternatively, the following edited language is recommended: *(3) The Commission may designate an enterprise as an SSDE in respect of a Core Digital Service, even if it does not meet the criteria set out under sub-section (2) if the Commission is of the opinion that such enterprise has a significant presence in respect of such a Core Digital Service, based on an assessment of information available with it, and based on any or all of the following factors:* *(i) volume of commerce of the enterprise;*	

[5] Hamdard Dawakhana and Anr. vs. Union of India and Ors., Supreme Court of India, AIR 1960 SC 554

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			(ii) size and resources of the enterprise; *(iii) number of business users or end users of the enterprise;* *(iv) economic power of the enterprise;* *(v) integration or inter-linkages of the enterprise with regard to the multiple sides of market;* *(vi) dependence of end users or business users on the enterprise;* *(vii) monopoly position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;* *(viii) barriers to entry or expansion including regulatory barriers, financial risk, high cost of entry, marketing costs, technical entry barriers, barriers related to data leveraging, economies of scale and scope, high cost of substitutable goods or*	

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			services for end users or business users;	
5.	**Chapter II, Section 4** on Self Reporting Obligation and Designation	Various global enterprises could potentially fall outside the purview of the draft Bill because of the unique business models they employ. For example, a global enterprise may have a subsidiary in India using the same trade name and providing only IT support services, whereas the core services that fall qualify as one or more of the CDSs mentioned in Schedule I of the draft Bill, are provided by an entity that is based or incorporated outside India. Alternatively, global enterprises may also have subsidiaries in India that only and exclusively provide ancillary services. As a result, these enterprises may not systematically record or report the value of turnover accruing specifically from India. Additionally, they may also not systematically collect data on "end-users" or "business-users" in a manner that is compliant with the proposed legal	At the outset, we humbly request that **home-grown businesses/ enterprises/ start-ups** should be kept outside the purview of the draft Bill. Furthermore, mandatory requirement to file certifications issued by statutory auditors certifying values provided in relation to the quantitative thresholds must be introduced. We recommend amending the draft Bill to mandate self-reporting filings under Clause 4 (read with Clause 3) to be made with certificates from the statutory auditors of the reporting enterprise. These certificates must also include a note from statutory auditors specifying the manner in which values have been	The combined effect of potential underreporting of turnover in India and not qualifying business users to mean "end business users" will be that large global companies may potentially fall outside the purview of the draft Bill.

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		requirements of the draft Bill. Several prominent global big-tech firms conduct their principal operations from outside India. It is possible and likely that global enterprises classify transactions made by users in India using international payment models as international transactions, which would bring down their 'India turnover' and 'users in India' figures and not reflect the true picture of their businesses.	computed, reported and audited by the statutory auditor. This would enhance transparency and accountability, ensuring that the reported values are accurate and verified by independent professionals.	
6.	**Chapter II, Section 6(1)** on period of designation *The Systemically Significant Digital Enterprise may, any time during the last six months before the expiry of the period of designation under Section 4 or re-designation under sub-section (5), apply to the Commission in the form as may be specified, that it no longer meets the thresholds to be designated as a Systemically Significant Digital Enterprise, for one or more Core Digital Services, as specified in sub-section (2) of Section 3 or that it no longer needs to be designated as a*	Under the proposed Section 4(8), an enterprise is designated as an SSDE for a period of 3 years. It is pertinent to note that digital enterprises function in dynamic markets, which may undergo significant changes in a period of 3 years. The proposed provision under Section 6(1) only grants an opportunity to an SSDE to approach the Commission after a period of 2 years and 6 months after being categorized as an SSDE.	At the outset, we humbly request that **home-grown businesses/ enterprises/ start-ups** should be kept outside the purview of the draft Bill. Furthermore, an SSDE should be able to approach the Commission to revoke its status as an SSDE any time after one year of its designation as an SSDE, whenever it ceases to breach the prescribed thresholds.	To avoid over regulation and encourage organic growth of **home-grown businesses/ enterprises/ start-ups** and the digital markets landscape in the country.

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	Systemically Significant Digital Enterprise under sub-section (3) of Section 3.	As such, an SSDE may not breach the thresholds prescribed under Section 3(2) to be classified as an SSDE for the continuing period of 3 years. In such a scenario, continued regulatory burden on an enterprise in a dynamic market will hamper innovation and may risk skewing the competitive landscape.		
7.	**Chapter II, Section 4(9)** on Associate Digital Enterprise ("**ADE**") *Where an enterprise has been designated as a Systematically Significant Digital Enterprise or the Commission is considering whether to designate an enterprise as a Systematically Significant Digital Enterprise, and such enterprise is a part of a group, and one or more other enterprises within such group are directly or indirectly involved in the provision of the Core Digital Service in India, the Commission may, after giving an opportunity of being heard to such other enterprises, pass an order designating them as Associate Digital Enterprises, and such designation as Associate Digital Enterprise shall continue for the period of designation*	The language in the following part of the section is not clear. "*... and such enterprise is a part of a group, and one or more other enterprises within such a group are directly or indirectly involved in the provision of the Core Digital Service in India…*". Particularly, there is ambiguity on whether an entity will be deemed to be an ADE if it is involved in the provision of the SSDE's core service *or* if it is involved in any of the 9 specified core services.	It is recommended that SSDEs be classified at each entity level (as opposed to group level)- with any provisions on ADE omitted. Entities below the required quantitative (financial and spread) thresholds should be kept outside the ambit of the draft Bill, regardless of their association. Additionally, it is again recommended that the quantitative threshold be increased to exclude **home-grown businesses/**	To deter inadvertent negative impact on smaller businesses that may otherwise be excessively governed owing to association.

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	of the enterprise as Systematically Significant Digital Enterprise.	If it is the latter, then many small entities under group companies will get covered - thereby impacting innovation and scale.	**enterprises/ start-ups**, and qualitative thresholds be removed in entirety.	
8.	**Chapter III, Section 7(2)** on Obligations on ADEs The Associate Digital Enterprises shall comply with all the obligations that the Systematically Significant Digital Enterprise is required to comply with, and non-compliance with such obligations shall be subject to the same penalties that may be imposed on the Systematically Significant Digital Enterprises.	The inclusion of and obligations on ADEs may be excessive, as many "associated enterprises" may be nascent innovations and substantially smaller than the quantitative threshold prescribed in this draft Bill. As a result of including them within the ambit of regulations, the draft Bill may inadvertently hamper innovation and disadvantage small entities.	It is recommended that the provision be omitted.	To avoid inadvertent excessiveness resulting in hampered innovation and disadvantage to small entities, new entities, and **home-grown businesses/ enterprises/ start-ups.**

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9.	**Chapter III, Section 8(1)** on Anti-circumvention from obligations *A Systemically Significant Digital Enterprise shall not engage in any behaviour that undermines effective compliance with the obligations under this Chapter and the rules and regulations framed hereunder, regardless of whether that behaviour is of a contractual, commercial or technical nature, or of any other nature, or consists in the use of behavioural techniques or interface design.*	It is not clear what the "use of behavioural techniques or interface design" means. In addition, 'interface design' is already covered under the Guidelines for Prevention and Regulation of Dark Patterns, 2023 notified by the Department of Consumer Affairs, Government of India. Inclusion of the same here would lead to regulatory duplication.	We request the Ministry to kindly provide a clarification/ explanation for the same. The draft regulations proposed in this regard should only be introduced after a stakeholder consultation process. In addition, duplicity with existing regulation including the Guidelines for Prevention and Regulation of Dark Patterns, 2023 should be avoided.	To remove ambiguity and regulatory duplication.
10.	**Chapter III, Section 12(2)** on Data usage *A Systemically Significant Digital Enterprise shall not, without the consent of the end users or business users:* *(a) intermix or cross use the personal data of end users or business users collected from different services including its Core Digital Service; or* *(b) permit usage of such data by any third party.*	The Digital Personal Data Protection Act, 2023[6] ("**DPDP Act, 2023**") already has provisions on the use of personal data without the consent of the users. The draft Bill provides that an SSDE shall not without the consent of the end users or business users: (a) intermix or cross use the personal data of end users or business users collected from	It is recommended that provisions concerning use of personal data be omitted to avoid any overlap with the DPDP Act, 2023 and rules (to be prescribed) thereunder.	To avoid a potential lack of synergy in various regulations that may be duplicative and require parallel compliance structures from the industry. To also avoid duplicate and excessive penalties.

[6] The Digital Personal Data Protection Act, 2023

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		different services including its Core Digital Service; or (b) permit usage of such data by any third party. However, the DPDP Act, 2023 already has provisions that prohibit the use of personal data without the consent of users/ data fiduciaries. In addition, the DPDP Act, 2023 provides for penalties in cases of non-compliance. Duplication of penalties under this draft Bill for data consent related issues will severely deter growth companies, and will be cumulatively in excess.		
11.	**Chapter III, Section 12(3)** on Data usage *A Systemically Significant Digital Enterprise shall allow business users and end users of its Core Digital Service to easily port their data, in a format and manner as may be specified.*	The provision is ambiguous in its drafting - in that, it can be misconstrued as platforms allowing data of business users and end users to be shared with each other (beyond servicing of the end users' requirement). Such misinterpretation may be in contravention to the principles of DPDP 2023. End user data is not business user's data, and vice versa. Ergo,	We recommend that the word 'respectively' be added in the provision, as follows: *A Systemically Significant Digital Enterprise shall allow business users and end users of its Core Digital Service to easily port their data* ***respectively****, in a format*	To avoid ambiguity in drafting and resultant misinterpretation.

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		sharing data of each other with each other will be against the principles of DPDP Act 20203, and will result in end users receiving solicitation and sales calls from businesses for which they did not explicitly sign up.	*and manner as may be specified.*	
12.	**Chapter III, Section 13** on Restricting third-party applications *The Systematically Significant Digital Enterprise shall:* *a) Not restrict or impede the ability of end users and business used to download, install, operate or use third-party applications or other software on its Core Digital Services;* *b) Allow end users and business users to choose, set and change default settings.*	This section is welcome and its applicability should be seen in regards with the Core Digital Service of operating systems only. The provisions should not be applicable to the nature of business of many online intermediation services - including e-commerce entities.	It is recommended that the language around this provision be tightened to limit its applicability to the intended Core Digital Service (i.e., operating systems)	To avoid ambiguity in drafting.
13.	**Chapter III, Sections 14 (Anti-steering) and 15 (Tying and bundling),** on the Commission's power to specify "integral" restrictions *Section 14: A Systemically Significant Digital Enterprise shall not restrict business users from, directly or indirectly, communicating with or promoting offers to their end users, or directing their end users to their own or*	The Commission will have the prerogative to determine what constitutes "integral" product or service for an SSDE. This wide discretion may risk entirely defeating the business use case of certain SSDEs, such as the anti-steering provision when applied to aggregators such as e-commerce entities.	At the outset, we humbly request that **home-grown businesses/ enterprises/ start-ups** should be kept outside the purview of the draft Bill. Further, it is suggested that the Commission decide on what constitutes an	To avoid stifling the SSDE and disrupting their business.

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	third party services, unless such restrictions are integral to the provision of the Core Digital Service of the Systemically Significant Digital Enterprise. *Section 15: A Systemically Significant Digital Enterprise shall not require or incentivise business users or end users of the identified Core Digital Service to use one or more of the Systemically Significant Digital Enterprise's other products or services, or those of:* *(a) related parties; or* *(b) third parties with whom the Systemically Significant Digital Enterprise has arrangements for the manufacture and sale of products or provision of services* *alongside the use of the identified Core Digital Service, unless the use of such products or services is integral to the provision of the Core Digital Service.*	In addition, in reference to Section 14 on Anti-steering, which provides for the SSDE to not directly or indirectly restrict business users from communication with or promoting offers to ***'their'*** end user - it is humbly submitted that 'their' is a highly contentious usage of language as the end users can be construed to be that of the digital platform given the cost of customer acquisition that is borne by said platform.	"integral" product or service only after consulting with the business teams of the incumbent SSDE. The draft regulations proposed in this regard should only be introduced after a stakeholder consultation process. In addition, it is suggested that pronoun prescriptions such as *'their'* for end users and data be avoided in drafting.	
14.	**Chapter V, Section 24** on Director General to Investigate Contraventions … *(3) Without prejudice to subsection (2), it shall be the duty of all officers, other employees and agents of a party which are under investigation:* *(a) to preserve and to produce all information, books, papers, other documents and records of, or relating to, the party which*	The powers of the Director General relating to seeking information from legal advisors may be incompatible with Indian Evidence Act, 1872 and other laws. As per the draft Bill, the Director General may ask for information necessary for the purposes of	It is recommended that legal advisors be removed from the ambit of this section/ draft Bill. It is also recommended that, in addition to the legal advisors, any documents protected by attorney-client privilege also be removed	Carving out an exception for legal advisors and documents protected by attorney-client privilege will ensure that the Draft Bill is not in contravention to the Evidence Act, 1972.

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	are in their custody or power to the Director General, or any person authorised by it in this behalf; and *(b) to give all assistance in connection with the investigation to the Director General.* *(4) The Director General may require any person other than a party referred to in sub-section (3) to furnish such information or produce such books, papers, other documents or records before it or any person authorised by it in this behalf if furnishing of such information or the production of such books, papers, other documents or records is relevant or necessary for the purposes of its investigation.*	investigation from the agents of a party. Under the draft Bill, "agents" include legal adviser. Under the Indian Evidence Act, no barrister, attorney, pleader, or vakil is permitted to disclose any professional communication without his client's consent.[7] Under the Companies Act, 2013, legal advisors are exempt from disclosing certain information.[8] This includes any privileged communication with the legal advisor. Therefore, the provisions relating to the powers of the Director General to seek information from legal advisors may be against existing laws that govern attorney-client privilege.	from the ambit of this draft Bill.	
15.	**Chapter VI, Section 28** on the possibility of dual penalty	There is a lack of clarity on the possibility of an SSDE being penalized for a certain conduct under the Competition Act, 2002, as well as the draft Bill,	At the outset, we humbly request that **home-grown businesses/ enterprises/ start-ups** should be kept outside the purview of the	To avoid double investigations and imposition of penalties twice for the same conduct.

[7] Section 126, The Indian Evidence Act, 1872
[8] Section 227, The Companies Act, 2013

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		leading to the possibility of penalizing the same conduct twice. This could lead to catastrophic outcomes for an SSDE.	draft Bill. Furthermore, it is suggested that a clarification be added to clarify that the same conduct will only be penalized once. With this regard, it is recommended that: ● If an investigation is completed under one Act, it cannot be reopened leveraging the other Act. ● No investigation on the same issue should be done parallelly invoking both Acts. ● No double penalties, enquiries or investigations. ● The Principle of Proportionality should be applied while deciding on the penalty, if at all. Considering "*group*" global	

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			turnover[9] may result in disproportionately high penalties, and affect innovation & investment in India. • The Digital Competition Act should be prospective in nature.	

[9] The term *"global turnover"* here refers to the global turnover of global big-tech companies operating out of India.