

**GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS**

**RAJYA SABHA
STARRED QUESTION NO. 164
ANSWERED ON TUESDAY, THE 6th August, 2024 / SRAVANA 15, 1946 (Saka)**

DIGITAL COMPETITION BILL

QUESTION

164 Shri Jawhar Sircar:

Will the Minister of Corporate Affairs be pleased to state:

- (a) the punitive obligations imposed to control Big Tech companies called SSDEs in the Draft Digital Competition Bill;
- (b) whether the Bill will protect apps and users by controlling Big Tech's self-preferencing for own apps and their anti-steering policies directed to enrich them;
- (c) whether it will curb their restrictive practices that prohibit open downloading of apps not pushed by Big Tech;
- (d) whether the Bill enjoins adequate safeguards when empowering CCI to intervene in digital markets; and
- (e) the manner in which it will impact the growing digital economy and whether it will compel Big Techs to submit to Government's will?

ANSWER

THE MINISTER OF FINANCE
AND CORPORATE AFFAIRS

(SHRIMATI NIRMALA SITHARAMAN)

(a) to (e) A statement is laid on the Table of the House.

STATEMENT REFERRED TO PARTS (a) TO (e) OF RAJYA SABHA STARRED QUESTION NO. 164 FOR 06.08.2024 REGARDING DIGITAL COMPETITION BILL

(a): Following the recommendations of Parliamentary Standing Committee on Finance in its 53rd report on the subject titled “Anti-Competitive Practices by Big Tech Companies”, a Committee on Digital Competition Law (CDCL) was constituted vide order dated 06.02.2023 to inter-alia review whether existing provisions in the Competition Act, 2002 and the rules and regulations framed thereunder are sufficient to deal with the challenges that have emerged from the digital economy and to examine the need for an ex-ante regulatory mechanism for digital markets through a separate legislation. The Committee submitted its report to the Government in February 2024. The Committee, in its report, has recommended the introduction of an ex-ante legislation specifically applicable to large digital enterprises, to supplement the existing Competition Act. A Draft Digital Competition Bill (Draft DCB) recommended by the Committee has also been enclosed with the report. The Report of the Committee along with the draft DCB was subsequently placed in public domain for stakeholders’ consultation.

The Committee in its report has proposed that the draft DCB should apply to a pre-identified list of Core Digital Services (“CDS”) that are susceptible to concentration and has recommended that the draft DCB should only regulate enterprises which have a ‘significant presence’ in the provisions of CDS in India, and the ability to influence the Indian digital market. Such enterprises have been recommended to be designated as Systemically Significant Digital Enterprises (“**SSDEs**”). Further, Group enterprises of an SSDE, which are directly or indirectly involved in the provision of a CDS may also be designated as Associate Digital Enterprises (“**ADEs**”). The Committee has recommended Competition Commission of India (CCI) as the enforcing regulator of the SSDEs and ADEs.

The Committee in its report has recommended an agile and principle-based framework of ex-ante obligations under the Draft DCB. As per the report of the Committee, the specificities of the obligations as applicable to each Core Digital Service may be specified through regulations drafted by the CCI through a consultative process. The Committee, cognisant that not all SSDEs and ADEs providing the same CDS have the same degree of influence on the market within which they operate, has recommended that the regulations may provide for differential obligations upon different SSDEs and ADEs depending on factors such as their business models and size of their user base. The obligations to be complied by SSDEs/ADEs are mentioned in Chapter III of the draft DCB.

The draft DCB in Chapter VI, inter-alia provides for the following punitive provisions on an SSDE or ADE:

- Penalty for contravention of CCI’s orders or directions in exercise of the CCI’s power under the draft DCB.
- Penalty not exceeding ten per cent of global turnover, in the preceding financial year for failure to comply with any of the obligations laid down in Chapter III of the draft DCB and the rules and regulations framed thereunder

- Penalty not exceeding ten per cent of global turnover, in the preceding financial year in case of anti-circumvention from designation
- Penalty not exceeding one percent of global turnover of the enterprise for failure to notify the Commission of meeting the criteria for designation of SSDE
- Penalty not exceeding one per cent of the global turnover for failing to provide or supplying incorrect, incomplete or misleading information to the Commission or the Director General

(b): The draft DCB as recommended by the Committee prohibits self-preferencing by obligating that an SSDE shall not, directly or indirectly, favour its own products, services or lines of business, or those of related parties or those of third parties with whom the SSDE has arrangements for the manufacture and sale of products or provision of services, over those offered by third party business users on the CDS, in any manner.

Additionally, the draft DCB seeks to check anti-steering practices by requiring that an SSDE 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 third-party services, unless such restrictions are integral to the provision of the CDS of the SSDE.

(c): As per the draft DCB recommended by the Committee, the SSDE shall: (a) not restrict or impede the ability of end users and business users to download, install, operate or use third-party applications or other software on its CDS; and (b) allow end users and business users to choose, set and change default settings.

(d): As per the draft DCB, Regulations will be framed by the CCI to specify conduct requirements in relation to the obligations through a consultative process that includes inviting public comments and consultation with statutory authorities and government bodies. Further, all orders which may adversely affect the rights of parties may be contested in appeal before the National Company Law Appellate Tribunal (NCLAT) and the Supreme Court.

(e): The preamble of the draft DCB recommended by the Committee has proposed the Digital Competition Act, to be an Act to identify SSDE and their ADEs and to regulate their practices in the provision of Core Digital Services, keeping in view the principles of contestability, fairness and transparency, with an objective to foster innovation, promote competition, and protect the interest of users of such services in India. The Committee has emphasised the need to strike a fine balance between increased regulation and enabling innovation. The Committee has noted that it is important to ensure that policy measures are carefully crafted only to address anti-competitive conduct by existing large digital enterprises, and to not throttle the growth of emerging digital enterprises that have the capacity to grow into global players.